

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

Reference List of IBLA Decisions Concerning Lease Relinquishments,
Terminations, Reinstatements, Cancellations, and
Bona Fide Purchaser Provisions

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September 12, 1994 - Bernard S. White 130 IBLA 324)
Oil and Gas Leases: Reinstatement

A petition for class I reinstatement of an oil and gas lease terminated by failure to timely pay rental was properly denied when the lessee sought to justify late payment by showing inefficient handling of his rental payment by the Postal Service; having chosen the means for delivery of payment, the lessee was required to bear the consequence of delayed delivery and irregular handling of the payment envelope by his chosen passenger. TERMINATION -
MAIL DELAY BY
POSTAL SERVICE

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April 28, 1994 - Marian L. Kleiner (129 IBLA 216)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A class I petition for reinstatement of an oil and gas lease is properly granted where the record on appeal supports the lessee's claim of illness and demonstrates the requisite proximity and causality to justify the late payment of rental. REINSTATEMENT
ILLNESS

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January 21, 1993 - Gilbert & Bonnie Sockwell (125 IBLA 150)
November 4, 1992 - Petro-Hunt Corp. (124 IBLA 318)
Oil and Gas Leases: Reinstatement

A petition for class I reinstatement of an oil and gas lease is properly denied where the rental payment was received by BLM after the anniversary date, and the lessee, having paid the rental within 20 days following the lease anniversary date, fails to establish that the failure to pay the rental on the anniversary date was justified or not due to a lack of reasonable diligence. TERMINATION -
LATE PAYMENT

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December 29, 1992 - High Plains Petroleum Corp. (125 IBLA 24)
Oil and Gas Leases: Cancellation

An oil and gas lease is properly cancelled where it was inadvertently issued in violation of the regulatory requirement to conform use authorizations to the approved RMP for lands officially designated as an area of critical environmental concern, with a prescription for no leasing because the area contains several Federally listed endangered and threatened plant species.

CANCELLATION -
LEASE IMPROPERLY
ISSUED IN A
NO LEASING AREA

March 11, 1992 - Andrew HeLal (122 IBLA 325)
Oil and Gas Leases: Termination

Under sec. 31(b) of the Mineral Leasing Act, as amended, oil and gas leases are subject to automatic termination by operation of law for failure to pay the annual rental in advance by the lease anniversary date. 30 U.S.C. 188(b) (1988). The automatic termination provision does not apply to rental charges becoming due at a time other than the anniversary date due to the termination of a suspension of the lease.

TERMINATION -
NOT APPLICABLE
WHEN RENT DUE AT
A TIME OTHER
THAN LEASE
ANNIVERSARY DATE

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July 30, 1991 - Sybil W. Taylor (120 IBLA 193)
Oil and Gas Leases: Termination--Oil and Gas Leases
Reinstatement

Where a noncompetitive oil and gas lessee fails to pay annual rental on or before the anniversary date of the lease and no oil or gas is being produced on the lease, the lease automatically terminates by operation of law. BLM may reinstate the lease pursuant to 43 CFR 3108.2-2(a) if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Where BLM approves an assignment of record title in an oil and gas lease to a party on May 12, well in advance of the June 1 anniversary date of the lease, lessee's assertion that she was unable to ascertain whether the assignment had been approved and where to mail the rental payment does not establish that the failure to pay rental timely was justified where she admits that she knew of the approval on or prior to the due date for the payment.

TERMINATION -
ASSIGNED LEASE

A late payment of rental may not be justified on the basis that the lessee did not receive a courtesy notice from MMS
(continued)

COURTESY NOTICE

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The provisions of 43 CFR 3108.2-2(a) recognize as reasonable diligence the mailing of rental payment to MMS on or before its due date and direct BLM to consider the postmark date in determining when the payment was mailed. This provision tacitly requires that a rental payment must be timely mailed to MMS in such a manner that it has a reasonable chance of being received there. Where a lessee mails the payment to MMS in an envelope bearing no street address, city, state, or zip code, the payment had no chance of being received by MMS, and the lessee's actions do not constitute reasonable diligence in timely making the rental payment.

TERMINATION -
FAILURE TO
PROPERLY
ADDRESS RENTAL
PAYMENT ENVELOPE

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March 14, 1991 - Petrolex 84-1 Limited (118 IBLA 372)
Oil and Gas Leases: Termination--Oil and Gas Leases:
Bona Fide Purchaser

30 U.S.C. 188(b) and 43 CFR 3108.2-1(b) require that a notice of deficiency be sent by the Secretary to an oil and gas lessee whose rental payment is paid on or before the anniversary date of the lease but in an amount nominally deficient. Where the regulation requires that this notice be served by certified mail, return receipt requested, it is not unreasonable to look to the party asserting delivery to produce positive proof of such event, e.g., by producing a signed return receipt card.

TERMINATION -
PROOF OF
CERTIFIED NOTICE
OF NOMINAL
DEFICIENCY
REQUIRED

A bona fide purchaser who is the assignee of a lease describing lands unavailable for lease is not entitled to the protection offered by 30 U.S.C. 184(h)(2) (1988) and 43 CFR 3108.4.

BONA FIDE
PURCHASER -
INTERESTS NOT
PROTECTED

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January 15, 1991 - Suzanne Walsh (117 IBLA 267)
Oil and Gas Leases: Cancellation

An oil and gas lease which was improperly issued because title to the land embraced by the lease was vested in the State of Oklahoma is properly cancelled by the Bureau of Land Management pursuant to 43 CFR 3108.3(d) (1988), when the leasehold does not contain a well capable of production of oil or gas in paying quantities, and is not committed to an approved cooperative or unit plan or communitization agreement.

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR
NONFEDERAL LANDS

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October 22, 1990 - Paul D. Lieb, Pardee Petroleum Corp.,
Ralph W. M. Keating (116 IBLA 279)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination--Oil and Gas Leases: Rentals

BLM has no authority to grant Class I reinstatement of an oil and gas lease under 30 U.S.C. 188(c) (1988), if the rental amount is not submitted within 20 days after the anniversary date.

TERMINATION
LATE PAYMENT

Cashing a late rental check for an oil and gas lease and depositing the funds in an unearned account does not constitute acceptance of rental payment or reinstate a terminated oil and gas lease.

RENTAL PAYMENT
PUT IN UNEARNED
ACCOUNT NOT
ACCEPTED AS
RENT PAYMENT

September 5, 1990 - Interior Reserves Corp. et al.
(116 IBLA 73)

Oil and Gas Leases: Assignments or Transfers--Oil and Gas
Leases: Reinstatement--Oil and Gas Leases: Rental--Oil and
Gas Leases: Termination

A noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure of a lessee to pay the full amount of the rental due on or before the anniversary date of the lease. However, a partial assignment of record title to acreage in a Federal oil and gas lease, filed by a qualified assignee prior to the lease anniversary date, may be approved where the annual rental for the segregated acreage in the assignment was tendered prior to the anniversary date, even though the base lease terminated for nonpayment of the full lease rental on the anniversary date of the lease.

TERMINATION -
FULL RENTAL FOR
BASE LEASE NOT
PAID, BUT RENTAL
FOR PARTIAL
ASSIGNMENT WAS
PAID PRIOR TO
ANNIVERSARY DATE

In the absence of a clear indication that it is intended for the preservation of a specific parcel or parcels, a partial payment of rental should be attributed to the leasehold generally. Such partial payment by an unapproved assignor may not be used to preserve the interests of parcels held by unapproved assignees in the absence of a clear indication that it was intended to be used to do so.

PARTIAL RENTAL
PAYMENTS
ATTRIBUTABLE
TO LEASEHOLD
GENERALLY

(continued)

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An unapproved assignor may not rely on BLM's approval of the assignment prior to the anniversary date in determining whether to submit rental for the entire leasehold. That is, where the assignor apparently submits less than full rental in the expectation that BLM would approve a pending assignment prior to the anniversary date (thereby reducing the rental due to be paid) he bears the risk that the assignment will not be approved prior to the anniversary date and that less than the full amount will be timely paid by the assignor and assignees.

UNAPPROVED
ASSIGNMENT
AT TIME OF
ANNIVERSARY
DATE WITH LESS
THAN FULL RENTAL
RENTAL PAYMENT
FOR BASE LEASE

Where the assignment of an oil and gas lease is pending before BLM, the assignor remains responsible for the performance of all obligations under the lease until the assignment has been approved, and BLM's failure to approve an assignment by the date the rental is due does not obviate the requirement the rental for the entire leasehold be paid on or before the anniversary date of the lease. The obligation to pay annual rental exists without regard to the fact that assignments of lease interests are pending, even though the assignments may ultimately be made effective retroactively to a date prior to the anniversary date.

FULL RENTAL FOR
BASE LEASE DUE
REGARDLESS
OF PENDING
ASSIGNMENTS
THAT MAY BE
APPROVED WITH
EFFECTIVE DATES
PRIOR TO LEASE
ANNIVERSARY DATE

Where the record titleholder of an oil and gas lease fails to request reinstatement within the time allowed, reinstatement is not authorized under governing statutory and regulatory provisions, and the termination of the lease becomes final. BLM must refuse to approve any pending assignments, as there is no lease interest left to be assigned.

LESSEE/RECORD
TITLEHOLDER
IS ONLY PARTY
ELIGIBLE TO
PETITION FOR
REINSTATEMENT

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June 28, 1990 - Burton/Hawks, Inc. (115 IBLA 143)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Pursuant to 30 U.S.C. 188(b) (1982), when a lessee fails to pay the required rental on or before the anniversary date of a lease on which there is no well capable of producing oil and gas in paying quantities, the lease automatically terminates by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date and the lessee can show that the failure to timely pay was either not due to a lack of reasonable diligence or was justifiable.

TERMINATION -
UNSIGNED CHECK

(continued)

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An unsigned check is not a negotiable instrument pursuant to the Uniform Commercial Code and where such a check is submitted to MMS in payment of the annual rental for an oil and gas lease such submission does not constitute timely payment within the meaning of 30 U.S.C. 188(b) (1982). MMS has no affirmative obligation to attempt to negotiate an unsigned check since, by definition, such an unsigned check is not a negotiable instrument.

UNSIGNED CHECK
IS NOT A
NEGOTIABLE
INSTRUMENT - MMS
IS NOT OBLIGATED
TO ATTEMPT TO
NEGOTIATE

April 17, 1990 - Jase O. Norsworthy et al. (114 IBLA 96)
Oil and Gas Leases: Cancellation--Oil and Gas Leases:
Overriding Royalties

Under 43 CFR 3108.3 (1987), BLM lacks the power to administratively cancel any oil and gas lease or interest therein that is in production.

CANCELLATION -
ADMINISTRATIVE
CANCELLATION OF
PRODUCING LEASE
NOT ALLOWED

April 10, 1990 - William F. Corkran (114 IBLA 76)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

For class II reinstatement, the lessee must tender the back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement within 60 days from the date of receipt of the Notice of Termination. Submission of back rental that is deficient may only be cured during the 60-day period allowed for filing for reinstatement.

REINSTATEMENT
BACK RENTAL

March 27, 1990 - Elaine Wolf (113 IBLA 364)
Oil and Gas Leases: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law or regulation because of the inadvertence of his subordinates. Where an oil and gas lease offer should have been rejected because it failed to comply with applicable regulations, a lease based on such an offer is properly cancelled.

CANCELLATION -
LEASE IMPROPERLY
ISSUED UNDER
REGULATIONS

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February 14, 1990 - Sandra Lewis (113 IBLA 174)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A decision denying a petition for reinstatement of a noncompetitive oil and gas lease filed pursuant to 30 U.S.C. 188(c) (1982), will be reversed on appeal where appellant has established that she was ill at the time the payment was due, and that such illness was the proximate cause of the late payment.

REINSTATEMENT -
ILLNESS WAS
CAUSE FOR
TERMINATION

June 5, 1989 - Joan Chorney (On Reconsideration) (109 IBLA 96)

Oil and Gas Leases: Cancellation

A decision to cancel an oil and gas lease will be affirmed on appeal to the extent it is shown that the lease was issued through administrative error for lands within a wilderness study area which the Department was barred by statute from leasing for oil and gas. The statutory protection afforded bona fide purchaser of a lease under 30 U.S.C. 184(h)(2) (1982), does not bar cancellation of a lease erroneously issued for lands which the Department was prohibited from leasing by act of Congress.

CANCELLATION -
LEASE IMPROPERLY
ISSUED ON LANDS
NOT OPEN BY LAW
TO LEASING

April 24, 1989 - Mallon Oil Co., et al. (108 IBLA 241)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Royalties--Oil and Gas Leases: Termination

BLM may, in accordance with 43 CFR 3108.2-3(f) reduce the royalty rate for a reinstated lease in three separate circumstances: (1) where it finds undue hardship or premature termination of production would result; (2) where a lessee has expended funds to develop the lease, after the rental was due and not paid, on the basis of any written action of the United States, its agents or employees, which preceded the expenditure of those funds and was a major consideration in their expenditure; or (3) where it finds it is equitable to do so for any other reason.
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REINSTATEMENT -
ROYALTY RATE
REDUCTION

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Where an oil and gas lessee requests, in accordance with 30 U.S.C. 188(i)(2) (1982), and 43 CFR 3108.2-3(f), reduction of the increased royalty rate upon reinstatement of its lease on the basis that a written action by BLM preceded and was a major consideration in its expenditure of funds to develop the lands covered by the lease after the rental became due and was not paid, that request is properly denied when the record shows that although the lessee received a letter from BLM after the anniversary date of the lease, that letter did not precede and was not a major consideration in the lessee's expenditure of funds to develop the lands covered by the lease.

REINSTATEMENT -
ROYALTY RATE
REDUCTION DENIED

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March 22, 1989 - Clarence Souser (108 IBLA 59)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. 188(c) (1982), requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the due date is not reasonable diligence. The complexity of the lessee's business affairs will not justify a late payment.

TERMINATION -
MAILED AFTER
DUE DATE

BLM's cashing a late rental check and depositing it in an unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

RENTAL PAYMENT
PUT IN UNEARNED
ACCOUNT NOT
ACCEPTED AS
RENT PAYMENT

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March 21, 1989 - Henry Y. Yoshino (108 IBLA 47)
Oil and Gas Leases: Assignments or Transfers--Oil and Gas
Leases: Rental--Oil and Gas Leases: Termination

A rental payment for an oil and gas lease sent to the wrong office does not constitute proper tender of rental. BLM is required to terminate an oil and gas lease for failure to pay rental timely, and properly looks to the lessee of record for such payment. The assignee of an oil and gas lease, however, may tender payment while approval of the assignment is pending.

TERMINATION -
RENTAL PAYMENT
SENT TO WRONG
OFFICE BY
PENDING ASSIGNEE

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October 17, 1988 - Atlantic Richfield Co. (105 IBLA 61)
Oil and Gas Leases: Cancellation

Where a Federal oil and gas lease has issued covering land which has been patented with no mineral reservation to the United States in the patent, the oil and gas lease is properly canceled as to such land.

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR
PATENTED LANDS

Under the over-the-counter noncompetitive leasing system, no offer to lease public domain lands could include acquired lands. Where it was subsequently shown that acquired lands were leased pursuant to a lease offer for public domain lands, the lease is properly canceled as to the acquired lands.

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR
PUBLIC DOMAIN
AND ACQUIRED
LANDS

August 10, 1988 - Raymond H. Keeve (103 IBLA 352)
Oil and Gas Leases: Termination

A petition for reinstatement of a noncompetitive oil and gas lease filed pursuant to sec. 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. 188(c) (1982), is properly denied where the payment was mailed to BLM after the anniversary due date and the lessee has not demonstrated that the misplacement of files during a business move or an illness asserted as justification for late payment is the proximate cause of late payment.

TERMINATION -
LATE PAYMENT
DUE TO BUSINESS
MOVE OR ILLNESS
NOT JUSTIFIABLE

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July 25, 1988 - Clayton W. Williams, Jr., Exxon Corp.
(103 IBLA 192)
Oil and Gas Leases: Bona Fide Purchaser

Where, at the time of lease issuance, BLM's records pertaining to the lease revealed no indication that the lease has been issued in violation of the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (1982), but rather indicated that sufficient and proper analysis of potential environmental impacts had been completed prior to lease issuance, reliance by an assignee of the lease on the BLM decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status.

BONA FIDE
PURCHASER -
NO VIOLATION
OF NEPA IN
LEASE ISSUANCE

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June 3, 1988 - Energy Research Associates, Inc. (102 IBLA 329)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A terminated oil and gas lease may be reinstated pursuant to 30 U.S.C. 188(c), if the full rental is paid within 20 days after the lease anniversary date, provided failure to pay timely was justifiable and not due to a lack of reasonable diligence. Termination for failure to make timely payment occurs despite possession by BLM, in another lease account, of sufficient money to cover the missed payment. Failure of the lessee to make payment within 20 days of the lease anniversary forecloses reinstatement pursuant to 30 U.S.C. 188(c), where, prior to termination, the lessee has neither directed BLM to transfer funds to cover payment of the annual rental payment nor indicated that it seeks to use funds from another lease account to pay the annual lease rental.	TERMINATION - SUFFICIENT MONEY IN ANOTHER LEASE ACCOUNT CANNOT BE USED TO COVER MISSED RENTAL PAYMENT
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March 17, 1988 - Robert L. True (d.b.a. Comanche Enterprises),
Petroleum Research Corp., et al., SATELLITE 8303116
(101 IBLA 320)

Oil and Gas Leases: Bona Fide Purchaser

To qualify for protection as a bona fide purchaser under 30 U.S.C. 184(h)(2) (1982), and 43 CFR 3108.4, an assignee must have acquired his interest in good faith, for valuable consideration, and without notice of any violation of the law. Bona fide purchaser protection applies only where consideration has actually been paid prior to actual or constructive notice of an outstanding interest or defect in title.	BONA FIDE PURCHASER - ACTUAL OR CONSTRUCTIVE NOTICE
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Where a money market account is established to secure the consideration paid by assignee, and where it is agreed that the consideration paid will be held until approval of assignment (which event never occurs), the assignee is not entitled to protection as a bona fide purchaser.	BONA FIDE PURCHASER - INTEREST NOT PROTECTED
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A "remote purchaser" of an oil and gas lease interest is one who purchases such interest from a bona fide purchaser of the lease. Where it is determined that the seller of the lease interest is not a bona fide purchaser, the buyer is not entitled to the protection afforded to a remote purchaser. (continued)	REMOTE PURCHASER DEFINITION
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Where purchasers of an interest in an oil and gas lease enter into assignment agreements after BLM places notice of the possible cancellation of the lease in its official records, the purchasers have constructive notice of possible defects in the lease at the time they acquire their lease interests and, therefore, lack the good faith essential to an entitlement to protection as bona fide purchasers.

BONA FIDE
PURCHASER -
CONSTRUCTIVE
NOTICE PRECLUDES
PROTECTION

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March 17, 1988 - Hanes M. Dawson, Don F. Hugus, Jr.
(101 IBLA 315)

Oil and Gas Leases: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. Where oil and gas leases were inadvertently issued for lands that have been designated by Congress as wilderness before issuance of the lease, the Bureau of Land Management properly cancels the lease as to those lands.

CANCELLATION -
LEASE IMPROPERLY
ISSUED AFTER
LANDS DESIGNATED
AS WILDERNESS

The protection afforded by 30 U.S.C. 184(h)(2) (1982), to a bona fide purchaser of an oil and gas lease applied only where the predecessors-in-interest were in violation of some provision of the Act, such as the acreage limitations. It does not apply where the lease was erroneously issued for lands not subject to leasing.

BONA FIDE
PURCHASER -
INTEREST NOT
PROTECTED

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January 27, 1988 - R. Gerald Jones 101 IBLA 57)
Oil and Gas Leases: Reinstatement

The back rental due when filing a petition for class II reinstatement is determined at the increased rates accruing from the date of termination. The increased rates are the rates which will apply if class II reinstatement is granted: a minimum of \$5 per acre for nonproducing [noncompetitive] leases and \$10 per acre for producing [competitive] leases.

REINSTATEMENT -
BACK RENTAL DUE
AT INCREASED
RATE

Neither 30 U.S.C. 188(d)-(e) (1982), nor 43 CFR 3108.2-3, expressly require that fees for administrative costs and costs of publication in the Federal Register be submitted when a petition for class II reinstatement is filed or within the time limitation for filing a petition.

REINSTATEMENT -
TIME FRAME FOR
SUBMITTAL OF
REQUIRED FEES

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October 21, 1987 - Champlin Petroleum Co. (99 IBLA 278)
Oil and Gas Leases: Cancellation

It is improper to cancel an oil and gas lease where BLM had previously approved the assignment of the lease, the assignees were bona fide purchasers, and it has not been shown that the lease was issued in violation of any statutory or regulatory provision.

CANCELLATION -
IMPROPER TO
CANCEL LEASE IF
NO VIOLATIONS BY
LEASE ISSUANCE

August 11, 1987 - Mobil Producing Texas and New Mexico, Inc.
(99 IBLA 5)
Oil and Gas Leases: Extensions--Oil and Gas Leases:
Termination

Extension of an oil and gas lease by reason of drilling over the expiration date of the lease requires that drilling operations be ongoing on the expiration date and be conducted in the manner in which someone seriously looking for oil or gas in that area could be expected to proceed. A decision holding a lease to have expired will be affirmed where the well on the lease was abandoned prior to the lease expiration date, notwithstanding the lessee's intent to drill an additional well.

TERMINATION -
WELL ABANDONED
PRIOR TO LEASE
EXPIRATION DATE

August 11, 1987 - Sue A. Hartman (99 IBLA 1)
Oil and Gas Leases: Rentals--Oil and Gas Leases:
Reinstatement--Oil and Gas Leases: Termination

Where a tender of payment of the rental for an oil and gas lease more than 5 months before the anniversary date was promptly returned to the lessee with an explanation that it was a duplicate payment for the present lease year and a reminder of the next anniversary date by which rent is due, a decision holding the lease to have terminated by operation of law and denying a petition for reinstatement under 30 U.S.C. 188(c) (1982) (class I) will be affirmed if the rental payment is not received thereafter until more than 20 days after the anniversary date.

TERMINATION -
PAYMENT DUE
TIMELY DESPITE
RETURN OF MONIES
WITH MESSAGE OF
DUPLICATE
PAYMENT

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July 31, 1987 - Suzanne Walsh (98 IBLA 363)

Oil and Gas Leases: Cancellation

Where it is shown that an oil and gas lease which improperly issued embraces lands presently known to contain valuable deposits of oil or gas, the Department may not, consistent with 43 CFR 3108.3(c) (1984), administratively cancel such lease, but must commence suit in Federal district court to obtain a judicial cancellation of the lease.

CANCELLATION
JUDICIAL
PROCEEDINGS

July 20, 1987 - William R. Barthold (98 IBLA 293)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

The Secretary of the Interior may reinstate a terminated oil and gas lease pursuant to 30 U.S.C. 188(c) (1982), if the full rental payment is paid within 20 days of the lease anniversary date, and the failure to pay timely was justifiable or not due to a lack of reasonable diligence. Under 43 CFR 3108.2-1(a) [1986], a remittance postmarked by the U.S. Postal Service on or before the anniversary date and received in the proper office no later than 20 days after such anniversary date is timely filed. However, that regulation does not alter the anniversary date and where the rental payment arrives within that time period, but in an envelope postmarked after the anniversary date, even though the anniversary date fell on a day on which the proper office to received payment was closed, the lessee did not exercise reasonable diligence.

TERMINATION -
POSTMARK AFTER
ANNIVERSARY DATE

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April 29, 1987- Landmark Exploration Co. (97 IBLA 96)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas
Leases: Termination

The provision of 30 U.S.C. 184(h)(2) (1982) protecting the interests of bona fide purchasers from certain action by the Department to cancel an oil and gas lease is not applicable to expiration of a lease by operation of law under 30 U.S.C. 226 (1982).

BONA FIDE
PURCHASER -
LEASE EXPIRATION
PROVIDES NO
PROTECTION

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April 14, 1987 - Lyman J. Ipsen et al. (96 IBLA 398)

Oil and Gas Leases: Assignments or Transfers--Oil and Gas
Leases: Rentals--Oil and Gas Leases: Termination

A decision disallowing a pending partial assignment of an oil and gas lease will be affirmed where, prior to approval of the partial assignment, the lease had terminated automatically by operation of law for failure to pay the annual rental on or before the lease anniversary date and the assignee had not tendered the rental for the lands described in the partial assignment prior to the anniversary date.

TERMINATION -
ASSIGNMENT FILED
WITH NO RENTAL
TENDERED PRIOR
TO ANNIVERSARY
DATE

While a potential assignee of an oil and gas lease may pay the annual rental, BLM is under no obligation to give the potential assignee a courtesy notice of rental due prior to the lease anniversary date.

TERMINATION -
NO OBLIGATION
FOR A COURTESY
BILLING NOTICE

January 12, 1987 - Sun Exploration & Production Co.
(95 IBLA 140)

Oil and Gas Leases: Cancellation

BLM must cancel a noncompetitive oil and gas lease of acquired lands where the lessee failed to fully pay the first year's advance rental at the time of submission of his lease offer, in accordance with 43 CFR 3103.3-1 (1979), the deficiency was more than 10 percent and a subsequent lease offer was filed by a qualified third party.

CANCELLATION -
MORE THAN
NOMINAL RENTAL
DEFICIENCY AND
A PENDING JUNIOR
OFFER

October 30, 1986 - Stanley I. Okun, Alan L. Schwartzberg
(94 IBLA 197)

Oil and Gas Leases: Assignments or Transfers--Oil and Gas
Leases: Reinstatement

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated pursuant to 30 U.S.C. 188(c),(d), and (e) (1982).

REINSTATEMENT -
PETITION FROM
LESSEE REQUIRED
AND NOT FROM
POTENTIAL
ASSIGNEE

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October 23, 1986 - Jerald A. Waters (94 IBLA 150)
 Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
 Rentals--Oil and Gas Leases: Termination--Payments:
 Generally--Words and Phrases

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminated by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. 188(b) (1982). Under 30 U.S.C. 188(c) (1982), the Dept. of the Interior has no authority to make a Class I Reinstatement of a terminated oil and gas lease where the rental payment is not paid or tendered at the proper office within 20 days after the due date.

TERMINATION -
 NO PAYMENT
 WITHIN 20 DAYS
 AFTER THE
 ANNIVERSARY DATE

"Tender." Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment within the meaning of 43 CFR 3108.2-2(a)(1). A tender of rental payment is made only when payment is received by the proper office administering the lease, providing that office the opportunity either to accept or decline payment. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Department to consider the merits of a petition for a Class I reinstatement of an oil and gas lease.

DEFINITION OF
 "TENDER"

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September 25, 1986 - Larremore Petroleum Partnership
 (94 IBLA 30)
 Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
 Termination

A petition for reinstatement of noncompetitive oil and gas leases filed pursuant to sec. 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. 188(c) (1982), is properly denied where the payments were mailed to BLM after the lease anniversary dates and the illness asserted as justification for late payments is not substantiated as being the proximate cause of the late payments.

TERMINATION -
 ILLNESS NOT
 JUSTIFIABLE FOR
 LATE PAYMENTS

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

July 8, 1986 - Dominic D. Demicco (92 IBLA 378)
Oil and Gas Leases: Reinstatement

Congress has enacted two provisions for reinstating a noncompetitive oil and gas lease which has automatically terminated by operation of law pursuant to 30 U.S.C. 188(b) (1982) for failure to pay the rental timely. In order to qualify for Class I reinstatement under 30 U.S.C. 188(c) (1982), the rental must be tendered within 20 days of the anniversary date and the lessee must establish that failure to pay on time was either justifiable or not due to a lack of reasonable diligence. If failure to make timely payment was inadvertent, the lease may be eligible only for a Class II reinstatement pursuant to 30 U.S.C. 188(d) (1982). A lessee who was unaware that his lease would terminate if he did not mail his payment before the anniversary date has neither acted with reasonable diligence nor established that his failure to make timely payment was justifiable.

REINSTATEMENT -
UNAWARE OF
AUTOMATIC
TERMINATION
PROVISION OF LAW

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July 22, 1986 - Paul J. and Lyda R. Stivers (93 IBLA 97)
Oil and Gas Leases: Reinstatement

A lease automatically terminated by operation of law pursuant to 30 U.S.C. 188(b) (1982) may be reinstated pursuant to 30 U.S.C. 188(c) if the lease rental has been paid within 20 days of the lease's anniversary date and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Inability to pay is not, in itself, a justifiable reason for failing to make timely payment.

TERMINATION -
INABILITY TO
PAY RENTAL

July 16, 1986 - Neal Hunter (93 IBLA 80)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Pursuant to 30 U.S.C. 188(b) (1982), when the lessee fails to pay the required rental on or before the anniversary date of the lease, and no oil and gas is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence.
(continued)

TERMINATION -
AUTOMATIC BY
OPERATION OF LAW
FOR FAILURE TO
PAY ANNUAL
RENTAL TIMELY

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

Late payment of annual rental may be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control at or near the anniversary date. A lessee's failure to timely pay rental is not justifiable where the rental payment was returned by the U.S. Postal Service as undeliverable because the address on the envelope was unreadable. Appellant must bear the consequences of the Postal Service's inability to timely deliver the rental payment. Mailing the rental payment after the anniversary date does not constitute reasonable diligence.

TERMINATION -
UNREADABLE
ADDRESS TO
POSTAL SERVICE
NOT CAUSE FOR
EXTENUATING
CIRCUMSTANCE
OUTSIDE LESSEE
CONTROL

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June 25, 1986 - James Darby (92 IBLA 231)

Administrative Procedure: Generally--Notice: Constructive
Notice--Oil and Gas Leases: Assignments or Transfers--Oil
and Gas Leases: Reinstatement--Rules of Practice: Generally

A document sent certified mail by BLM to a person at his last address of record is considered to have been constructively served on that person at the time of return by the Postal Service of the undelivered certified letter, and such constructive service is equivalent in legal effect to actual service of the document. An oil and gas lessee's last address of record is that stated on the lease application form, unless the lessee has filed written notice of a change of address with the issuing BLM office. Thus, the time for filing a petition for reinstatement of a terminated oil and gas lease begins on the date the notice of termination was returned to BLM as undeliverable after it was sent to the lessee's last address of record, and expires 60 days later.

REINSTATEMENT -
TIME OF FILING
PETITION WHEN
TERMINATION
NOTICE RETURNED
UNDELIVERABLE
TO LAST ADDRESS
OF RECORD

Where the record title holder of an oil and gas lease fails to request reinstatement within 60 days of constructive service of a notice of termination of the lease, reinstatement is not authorized under governing statutory and regulatory provisions, and the termination of the lease becomes final.

REINSTATEMENT -
LESSEE/RECORD
TITLE HOLDER
IS ONLY PARTY
ELIGIBLE TO
FILE PETITION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 29, 1986 - Oscar D. Graham (91 IBLA 394)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination--Payments:
Generally--Words and Phrases

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. 188(b) (1982). Under 30 U.S.C. 188(c) (1982), the Dept. of the Interior has no authority to make a Class I Reinstatement of a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

TERMINATION -
NO PAYMENT
WITHIN 20 DAYS
AFTER LEASE
ANNIVERSARY
DATE

"Tender." Placing a check for annual rental for oil and gas leases in the mails does no constitute a tender of payment within the meaning of 43 CFR 3108.2-1(c). A tender of payment is made only when a lessee submits payment to the BLM office administering his lease, providing BLM with the opportunity either to receive or decline payment. Accordingly, placing rental in the mails does not constitute a tender of payment which would allow the Dept. to consider the merits of a petition for a Class I Reinstatement of an oil and gas lease.

DEFINITION OF
"TENDER"

Reinstatement of a terminated noncompetitive oil and gas lease under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 188(d), (e) (1982), requires payment by the lessee of rental at the rate of \$5 per acre as well as reimbursement of administrative costs (up to \$500) and the cost of publishing notice in the Federal Register.

REINSTATEMENT
INCREASED RENT
AND FEES
REQUIRED FOR
CLASS II

April 17, 1986 - Nancy Wohl (91 IBLA 327)

Oil and Gas Leases: Termination

Where an oil and gas lessee's annual rental payment was postmarked on the Monday following the anniversary date of the lease which fell on the preceding Sunday, the payment was not timely under the provisions of 43 CFR 3108.2-1(a), even though, under the regulation, the lease payment could have been timely received by BLM on the Monday upon which payment was postmarked. Mailing was not made the equivalent of actual payment nor was the anniversary date of the lease changed by the regulation, which permits payment on the next day following a lease anniversary when the office where payment is to be made is closed on the anniversary date.

TERMINATION -
POSTMARK ON
MONDAY AFTER
ANNIVERSARY DATE
OVER WEEKEND

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

February 26, 1986 - Monica V. Rowland (90 IBLA 349)
Oil and Gas Leases: Termination

Under 30 U.S.C. 188(c), BLM has no authority to reinstate a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental where the rental payment was not tendered at the proper office within 20 days after the anniversary date.

TERMINATION -
LATE PAYMENT

BLM may properly condition class II reinstatement under 30 U.S.C 188(d) and (e) (1982), of a noncompetitive oil and gas lease terminated automatically for nonpayment of annual rental upon tender of the required back rental, computed at the increased rate of \$5 per acre set forth in 30 U.S.C. 188(e)(2) (1982), within 60 days after receipt of a notice of termination.

REINSTATEMENT -
BACK RENTAL
PAYMENT WITHIN
60 DAYS OF
RECEIPT OF
TERMINATION
NOTICE

February 10, 1986 - Howard H. Vinson et al. (90 IBLA 280)
Oil and Gas Leases: Reinstatement

Where the record title holder of an oil and gas lease has made numerous assignments of interests in that lease, none of which has been approved by BLM, and the lease terminates by operation of law for failure to pay rental timely, only the record titleholder, and not any of the holders of unapproved assignments, may successfully petition for reinstatement of the lease pursuant to 30 U.S.C. 188(c) or (d) (1982). The right to petition for reinstatement is personal to the record titleholder of the lease.

REINSTATEMENT -
LESSEE/RECORD
TITLE HOLDER
IS ONLY PARTY
ELIGIBLE TO
FILE PETITION
(NOT POTENTIAL
ASSIGNEE)

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December 10, 1985 - PRM Exploration Co. (90 IBLA 63)
Oil and Gas Leases: Rentals--Oil and Gas Leases:
Termination

Under 30 U.S.C. 188(c) (1982), the Department of the Interior has no authority to make a class I reinstatement of a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

REINSTATEMENT -
CLASS I NOT
ALLOWABLE IF
RENTAL NOT PAID
WITHIN 20 DAYS
AFTER DUE DATE

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

August 28, 1985 - L & B Land Lease Group 82-3 (88 IBLA 221)
Oil and Gas Leases: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

CANCELLATION -
LEASE IMPROPERLY
ISSUED

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease.

NEW LEASE
CANCELLED FOR
LANDS ALREADY IN
EXISTING LEASE

May 16, 1985 - Monty Cranston, Inc. (86 IBLA 322)
Oil and Gas Leases: Relinquishment

Where the anniversary date of an oil and gas lease falls on a day when the proper office for payment is not open, a partial rental payment together with a partial relinquishment personally delivered to the proper state office on the next official working day serves to extend that part of the lease covered by the rental payment. A BLM decision finding such a lease to have terminated for failure to pay the full amount of the rental must be reversed.

RELINQUISHMENT -
PARTIAL RENTAL
PAYMENT FILED
WITH PARTIAL
RELINQUISHMENT
ON NEXT OFFICIAL
WORK DAY AFTER
ANNIVERSARY DATE

May 14, 1985 - James and Lillian Chudnow (86 IBLA 315)
Oil and Gas Leases: Relinquishment--Oil and Gas Leases:
Termination

An oil and gas lease may be relinquished by filing a written relinquishment in the proper BLM office. A relinquishment is effective on the date of its filing with BLM. However, a partial relinquishment filed after the lease has automatically terminated by operation of law is ineffective.

RELINQUISHMENT
PARTIAL FILED
AFTER LEASE
TERMINATION IS
INEFFECTIVE

Where rental payment for an oil and gas lease with a June 1 anniversary date is postmarked May 31 and received in the proper office on June 5, under 43 CFR 3108.2-1(a) such action may constitute reasonable diligence for purposes of class I reinstatement; however, where the payment is less than the full amount and the lessee fails to pay the full amount within 20 days after the anniversary date, class I reinstatement is precluded.

TERMINATION -
RENTAL PAYMENT
OF LESS THAN
FULL AMOUNT
AND REMAINDER
NOT PAID WITHIN
20 DAYS AFTER
ANNIVERSARY DATE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 3, 1985 - Dena F. Collins (86 IBLA 32)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

In order to qualify for Class II reinstatement, the lessee must establish that the failure to timely pay was inadvertent. An inadvertent act involves carelessness, oversight, mistake, or the failure to pay careful and prudent attention to a situation. A lessee's failure to timely pay rental is not inadvertent where the lessee was merely financially unable to pay the rental when due.

REINSTATEMENT -
INADVERTENCE AS
REASON FOR
FAILURE TO PAY
RENTAL TIMELY

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March 13, 1985 - Lee Oil Properties, Inc. et al. (85 IBLA 287)

Oil and Gas Leases: Bona Fide Purchaser

The protection afforded by 30 U.S.C. 184(h)(2) (1982), to a bona fide purchaser of an oil and gas lease which issued noncompetitively applies only where the predecessors-in-interest were in violation of some provision of the Act, such as the acreage limitations. It does not apply where the lease was erroneously issued for lands not subject to noncompetitive leasing.

BONA FIDE
PURCHASER -
PROTECTION NOT
APPLICABLE FOR
LEASE ISSUED
ERRONEOUSLY

Where the assignee of an oil and gas lease is chargeable with actual or constructive knowledge of the fact that the lease improperly issued, the assignee may not assert bona fide purchaser status pursuant to 30 U.S.C. 184(h)(2) (1982).

BONA FIDE
PURCHASER -
ACTUAL OR
CONSTRUCTIVE
NOTICE

December 27, 1984 - James P. Felt (84 IBLA 205)

Oil and Gas Leases: Termination

Under 30 U.S.C. 188(c) (1982), a lease terminated automatically for late payment of annual rental may be reinstated upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to pay timely was justifiable. In the absence of such proof, e.g., where the lessee mailed the payment after the lease anniversary date as a result of an oversight, the petition for reinstatement is properly denied.

TERMINATION -
LATE PAYMENT DUE
TO OVERSIGHT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

November 15, 1984 - American Mineral Leasing, Inc. (83 IBLA 372)

Oil and Gas Leases: Cancellation

BLM must cancel a noncompetitive oil and gas lease erroneously issued to a party other than the first-qualified offeror, where the lease was issued while that offeror's prior lease offer was pending on appeal before the Board and the offeror was ultimately determined to be qualified to receive a lease.

CANCELLATION -
LEASE IMPROPERLY
ISSUED WHERE
SENIOR OFFEROR
RULED BY IBLA TO
BE QUALIFIED TO
RECEIVE LEASE

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October 25, 1984 - Gulf Oil Corp. (83 IBLA 289)

Oil and Gas Leases: Generally--Oil and Gas Leases:

Noncompetitive Leases--Oil and Gas Leases: Reinstatement--

Oil and Gas Leases: Termination

Pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's judgment, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in the royalty rate below 16-2/3 percent is not justified.

REINSTATEMENT
ROYALTY RATE
REDUCTION

Section 401 of the Federal Oil and Gas Royalty Management Act of 1982 provides the Secretary of the Interior with discretionary authority to reinstate terminated leases. Reinstated leases which were terminated for "inadvertent" failure to make timely rental payment shall be subject to the conditions contained in 30 U.S.C. 188(e) (1982).

REINSTATEMENT -
FAILURE TO PAY
RENT INADVERTENT

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October 9, 1984 - Joseph J. C. Paine (83 IBLA 145)

Board of Land Appeals--Oil and Gas Leases: Reinstatement--

Oil and Gas Leases: Termination--Regulations: Force and Effect as Law--Secretary of the Interior

BLM does not have the authority to reinstate a noncompetitive oil and gas lease which expired at the end of its 2-year extended term because of lack of production in paying quantities.

(continued)

REINSTATEMENT -
NO AUTHORITY TO
REINSTATE AT END
OF 2-YEAR
EXTENDED TERM

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

<p>A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.</p>	<p>REGULATIONS CANNOT BE WAIVED BY THE BLM/SECRETARY</p>
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September 13, 1984 - Navajo Tribe of Indians (82 IBLA 387)
Oil and Gas Leases: Cancellation

<p>Where an oil and gas lease has been issued for lands which have been withdrawn from the public domain by Executive Order for Indian purposes, the lease must be canceled. The Secretary of the Interior has the authority to cancel any oil and gas lease which is issued contrary to law.</p>	<p>CANCELLATION - LEASE IMPROPERLY ISSUED FOR INDIAN LANDS</p>
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August 20, 1984 - Leo M. Krenzler (82 IBLA 205)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

<p>When the lessee fails to pay rentals on or before the anniversary date of the lease, where no oil or gas is being produced in paying quantities on the leased premises, then the lease shall automatically terminate by operation of law; however, if the full rental amount has been paid within 20 days of the lease anniversary date, and the failure was justifiable or not due to a lack of reasonable diligence, then the Secretary may reinstate the lease.</p>	<p>TERMINATION - LATE PAYMENT WITHIN 20 DAYS AFTER LEASE ANNIVERSARY DATE</p>
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<p>Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease; however, travel does not ordinarily prevent a person from making payment or arranging for others to make payment in his absence.</p>	<p>TRAVEL NOT JUSTIFIABLE REASON FOR LATE RENTAL PAYMENT</p>
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<p>Neither the bulk nor the complexity of an individual or a corporate lessee's business organization constitutes adequate justification for a late payment, and the Board cannot conclude that a late payment is justified when the lessee neglects to order his business affairs so that his lease rental is paid on time. (continued)</p>	<p>NEGLECT OF BUSINESS AFFAIRS NOT JUSTIFIABLE REASON FOR LATE RENTAL PAYMENT</p>
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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

In order to show that a late payment was not due to lack of reasonable diligence, a lessee must ordinarily show that payment was made sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing the payment one day after it is due does not constitute reasonable diligence.

PAYMENT A DAY
AFTER DUE DATE
FAILS TO
CONSTITUTE
REASONABLE
DILIGENCE

July 24, 1984 - John F. Clifton (82 IBLA 126)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination--Payments: Generally

The Secretary may reinstate leases terminated on or after January 12, 1983, if certain conditions are met and a petition for reinstatement plus required back rentals are filed the earlier of 60 days after lessee has received notice of termination or 15 months after lease termination. The submission of a rental check which is later dishonored by the drawee bank because of insufficient funds is neither a payment nor a tender of payment.

TERMINATION -
CHECK LATER
DISHONORED FOR
INSUFFICIENT
FUNDS IS NOT
A TENDER OF
PAYMENT

July 16, 1984 - Kurt W. Mikat (82 IBLA 71)

Oil and Gas Leases: Reinstatement

BLM properly denies a petition for reinstatement of a noncompetitive oil and gas lease, which terminated automatically after Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date, under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 188(d), (e) (1982), where the lessee did not submit the required back rental within 60 days after receipt of a notice of termination, computed at the increased rate of \$5 per acre set forth in 30 U.S.C. 188(e)(2).

REINSTATEMENT -
BACK RENTAL
MUST BE
SUBMITTED WITHIN
60 DAYS AFTER
RECEIPT OF
TERMINATION
NOTICE

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

July 11, 1984 - Nola Grace Ptasynski (82 IBLA 48)

Oil and Gas Leases: Rentals--Oil and Gas Leases:

Reinstatement--Oil and Gas Leases: Termination

The first-qualified applicant for an oil and gas lease acquires no vested right to have a lease issued to him but only a right to be preferred over other applicants if a lease is to be issued and his application may be rejected if it is determined that a previously terminated lease including the lands sought for leasing should be reinstated under sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, which amended sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. 188 (1982).

REINSTATEMENT -
PREVIOUSLY
TERMINATED LEASE
INCLUDING LANDS
SOUGHT FOR LEASE
REINSTATED AND
OFFEROR HAD NO
VESTED RIGHT TO
A LEASE

Sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. 188 (1982), affords an additional opportunity to reinstate a lease terminated by operation of law where it is shown to the satisfaction of the Secretary that failure to timely pay the rental was inadvertent, provided certain criteria are met.

REINSTATEMENT -
CLASS II
PROVISIONS

While the assignee of an oil and gas lease may not exercise any control or dominion over the lease prior to approval of the assignment, the assignee is not precluded from paying the annual rental in an effort to avoid termination of the lease or to qualify the lease for reinstatement upon petition by the lessee of record.

ASSIGNEE MAY
PAY ANNUAL RENT
TO AVOID LEASE
TERMINATION OR
TO QUALIFY
LEASE FOR
REINSTATEMENT

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June 6, 1984 - William F. Branscome (81 IBLA 235)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:

Termination

The holder of a noncompetitive oil and gas lease terminated by operation of law for failure to pay the annual rental timely is not entitled to reinstatement of his lease pursuant to section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. 188(c) (1982), where the late payment was mailed to BLM after the lease anniversary date and the lessee presents no evidence in support of the assertion that the reason for the late payment was illness at or near the lease anniversary date.

TERMINATION -
LATE PAYMENT
AND ILLNESS AT
OR NEAR LEASE
ANNIVERSARY DATE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

May 31, 1984 - Larry W. Ferguson (81 IBLA 167)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. 188(c) (1982) requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the complexity of the lessee's business affairs will justify a late payment.

TERMINATION -
LATE PAYMENT
NOT JUSTIFIED
BY RELIANCE ON
COURTESY NOTICE
AND COMPLEX
BUSINESS AFFAIRS

Where a lessee files a petition for reinstatement of a terminated oil and gas lease in response to notification of his rights to petition for reinstatement under 30 U.S.C. 188(c) (1982) and 30 U.S.C. 188(d) and BLM denies reinstatement only on the basis of noncompliance with the former statutory provision, the case will be remanded to BLM for consideration of reinstatement under the latter provision.

REINSTATEMENT -
REVIEW PETITION
UNDER ALL
STATUTORY
PROVISIONS
AVAILABLE

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March 28, 1984 - Horace H. Alvord IV (80 IBLA 49)

Oil and Gas Leases: Cancellation

Where a noncompetitive oil and gas lease erroneously reflects a lesser mineral interest in federally owned lands than is actually held by the United States, but where the lease has not been issued in contravention of any regulatory or statutory authority, it need not be canceled, but may be amended to reflect that all of the available Federal interest in the land has, in fact, been leased.

CANCELLATION -
LEASE ISSUED
WITH A LESSER
MINERAL INTEREST
INCORRECTLY
INDICATED CAN BE
AMENDED RATHER
THAN CANCELED

February 29, 1984 - Davis Oil Co. (79 IBLA 218)

Federal Employees and Officers: Authority to Bind
Government--Oil and Gas Leases: Reinstatement--Oil and Gas
Leases: Termination

To justify failure to pay annual rental of an oil and gas lease so as to entitle appellant to reinstatement of lease pursuant to 30 U.S.C. 188(c) (1976), the failure to make timely payment must be caused by factors beyond the control of the lessee. Where the record establishes that the lessee failed to send the rental payment in a timely fashion for unexplained reasons, and then failed to discover the missed payment until nearly 1 year later, there is no justification for the failure to make timely payment which will permit reinstatement.

TERMINATION -
LATE PAYMENT

.(continued)

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

A lease terminated by operation of law for failure to make timely payment can be reinstated upon proof of reasonable diligence in attempting to make payment or a showing that failure to make timely payment was justifiable, or, under certain circumstances, in the case of inadvertent failure to pay. Where appellant did not offer to pay annual rent due on Sept. 1, 1982, until Aug. 24, 1983, and offered no proof of circumstances to justify nonpayment on the due date, the record fails to support the reinstatement of an oil and gas lease pursuant to any provision of 30 U.S.C. 188 (1976) as amended.

LATE PAYMENT
DISCOVERED
NEARLY A
YEAR LATER

Neither the doctrine of equitable estoppel nor substantial fairness is available to offer appellant relief where reliance upon those doctrines is predicated upon circumstances which indicate appellant merely failed to make timely payment through its own neglect. The existence of a cover letter indicating a payment was sent where it subsequently appears there was no payment attached to the letter as shown, is insufficient alone to place the burden upon the Government to either establish it did not receive payment, or alternatively, to explain why it did not notify appellant of the apparent omission of payment from its letter.

RECEIPT OF
RENTAL PAYMENT
UNCERTAIN

February 23, 1984 - Anthony F. Hovey (79 IBLA 148)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Under 30 U.S.C. 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised or that lack of diligence was justifiable. In the absence of such proof, a petition for reinstatement is properly denied.

TERMINATION -
LATE PAYMENT

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

REASONABLE
DILIGENCE

Untimely payment of the annual rental may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Being away from the office on business does not establish that late rental payment was justifiable.

JUSTIFIABLE
CIRCUMSTANCES
DO NOT INCLUDE
BEING AWAY
FROM OFFICE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

February 13, 1984 - Arthur M. Solender, Lynn Devereaux
(79 IBLA 70)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination--Words and Phrases.

Under 30 U.S.C. 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated where the rental is paid within 20 days and upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to make timely payment was justifiable. In the absence of such proof, the petition for reinstatement is properly denied.

TERMINATION -
LATE PAYMENT

"Last address of record." Where 43 CFR 1810.2 requires the Bureau of Land Management deliver communications by mail to the last address of record, such address is the most recent one provided for the case file by the lessee with the declared intent that all required communications be delivered there. Where a party has not so specified, the appearance of a different return address on an envelope or rental payment check received by the Bureau of Land Management does not constitute a change of the address of record.

LAST ADDRESS
OF RECORD -
DEFINITION

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessees' assertion that the mailing occurred at an earlier date.

POSTMARK
CONSIDERED THE
DATE OF MAILING

A late payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessees' control which affected their actions in paying the rental fee. Unsubstantiated speculation as to errors in handling and processing the payment by the U.S. Postal Service is not evidence of extenuating circumstances which will justify the untimely rental payment.

POSTAL SERVICE
PROCESSING
NOT JUSTIFIABLE
REASON FOR
LATE PAYMENT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

January 9, 1984 - Robert Lyon (78 IBLA 232)

Oil and Gas Leases: Cancellation

BLM must cancel a noncompetitive oil and gas lease of acquired lands where it is determined after lease issuance that the lands are situated within the boundaries of an incorporated city. Such lands are not subject to oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 352 (Supp. V 1981).

CANCELLATION -
LEASE IMPROPERLY
ISSUED IN
INCORPORATED
CITY

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December 30, 1983 - Frank M. Youngblood (78 IBLA 162)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases: Cancellation

Where a noncompetitive oil and gas lease was issued to a junior offeror who assigned his entire interest in the lease to others prior to issuance of a lease to the senior offeror for the same lands, the record is found not to be sufficient to sustain the lease issuance to the junior offeror and his assignees, whose statements appearing of record fail to establish them to be bona fide purchasers within the meaning of 43 CFR 3108.3(c). A hearing is ordered to permit the making of an adequate record upon which a determination of priority of interest may be made.

CANCELLATION -
LEASE IMPROPERLY
ISSUED TO JUNIOR
OFFEROR

BONA FIDE
PURCHASER -
JUNIOR OFFEROR
AND ASSIGNEE
NOT PROTECTED

While the interests of a bona fide purchaser may be protected from cancellation by 30 U.S.C. 184, the interest of an assignor who knows his title was defective is not protected. Overriding royalty interest reserved by assignor of lease acquired with knowledge of senior lease offer ordered canceled.

BONA FIDE
PURCHASER -
ASSIGNOR
INTEREST
NOT PROTECTED

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October 31, 1983 - Rosita Trujillo (77 IBLA 35)

Oil and Gas Leases: Bona Fide Purchaser

The bona fide purchaser of an oil and gas "lease" without notice of a defect in the assignor's title is protected by statute from cancellation of his interest in the lease. The purchaser of an interest in a "lease offer" cannot foreclose the Department from properly adjudicating the lease offer. Hence, the assignee is properly deemed to have notice of any potential defects disclosed in the case record during adjudication prior to lease issuance to the extent that an administrative decision on adjudication is not final but subject to appeal by a party adversely affected.

BONA FIDE
PURCHASER
NOTICE IN
CASE FILE
PRECLUDES
PROTECTION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

October 19, 1983 - McClellan Oil Corp. (76 IBLA 322)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b) the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. 188(b) (1976) creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

TERMINATION -
DOES NOT OCCUR
WHEN LESSEE
RELIES ON
ERRONEOUS
COURTESY NOTICE

October 11, 1983 - D. M. Yates (76 IBLA 208)

Oil and Gas Leases: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 CFR 1421-1427 (1976).

CANCELLATION -
LEASE IMPROPERLY
ISSUED ON LANDS
WITHDRAWN FROM
LEASING

September 6, 1983 - Joanne F. Bechtel (76 IBLA 1)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

In order for the failure to pay the annual rental for a noncompetitive oil and gas lease to be considered justifiable and subject to reinstatement under 30 U.S.C. 188(c) (1976), it must be caused by factors outside the lessee's control. Where the lessee does not demonstrate that the combination of the start of a new school year, the start of a new career for her husband, and the chronic illness of her mother-in-law during the month preceding the lease anniversary date were the proximate cause of her late rental payment, failure to pay the rental timely cannot be considered justifiable and the lease will not be reinstated.

TERMINATION -
LATE PAYMENT
NOT JUSTIFIABLE
DUE TO SEVERAL
EXTENUATING
FACTORS

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

August 22, 1983 - Harry C. Peterson (75 IBLA 195)

Oil and Gas Leases: Assignments or Transfers--Oil and Gas
Leases: Reinstatement--Oil and Gas Leases: Termination

Reinstatement of an oil and gas lease terminated pursuant to 30 U.S.C. 188(c) (1976) requires a showing by the lessee that the late payment was either justifiable or not due to a lack of reasonable diligence. Hand deliverance of the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the failure of an assignor of an unapproved assignment to protect the assignee's interest will justify the late payment.

TERMINATION -
HAND DELIVERY OF
RENTAL PAYMENT
AFTER DUE DATE
NOT REASONABLE
DILIGENCE

Pending approval of the assignment by BLM, the assignor shall continue to be responsible for the performance of any and all obligations under the lease. Only the lessee of record can claim or request reinstatement of the lease.

REINSTATEMENT -
ONLY LESSEE IS
ELIGIBLE TO
FILE PETITION

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September 30, 1983 - Eleanor L. M. Dubey (76 IBLA 177)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rental--Oil and Gas Leases: Termination

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

REINSTATEMENT -
REASONABLE
DILIGENCE
FOR MAILING
OF PAYMENT

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Olympia, Washington, 3 days before it is due in Anchorage, Alaska, does not constitute reasonable diligence.

REASONABLE
DILIGENCE -
SUFFICIENTLY
IN ADVANCE
OF DUE DATE

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected her actions in paying the rental.

JUSTIFIABLE
CIRCUMSTANCES
OUTSIDE LESSEE
CONTROL

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

July 12, 1983 - D. M. Yates (74 IBLA 159)
Oil and Gas Leases: Cancellation

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a regulation provides that no oil and gas lease offers will be accepted on lands withdrawn for the protection of wildlife, and the authorized officer fails to follow the regulation, such signing is not authorized and, therefore, not binding on the Secretary.

CANCELLATION -
LEASE IMPROPERLY
ISSUED ON LANDS
WITHDRAWN FOR
PROTECTION OF
WILDLIFE

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May 4, 1983 - Crest Oil & Gas Corp. (72 IBLA 370)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

TERMINATION -
LATE RECEIPT OF
COURTESY NOTICE
AND OFFICE MOVE
FAIL TO JUSTIFY
LATE PAYMENT

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April 16, 1983 - Getty Oil Co. (72 IBLA 39)
Oil and Gas Leases: Extensions--Oil and Gas Leases
Reinstatement--Oil and Gas Leases: Termination

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year on or before the anniversary date of the lease.

TERMINATION -
FAILURE TO
PAY 11TH YEAR
RENTAL

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 6, 1983 - NP Energy Corp. (72 IBLA 34)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A late payment is not justified where there is a pending assignment of the lease which has not been approved by BLM and the lessee incorrectly assumes that the assignment will have been approved by the rental due date or where the lessee is in the process of moving its corporate offices.

TERMINATION -
LATE PAYMENT NOT
JUSTIFIABLE DUE
TO UNAPPROVED
ASSIGNMENT
PENDING

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April 4, 1983 - Buttes Resources Co. (72 IBLA 18)

Oil and Gas Leases: Reinstatement - Oil and Gas Leases:
Rentals - Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

TERMINATION -
DATE OF RECEIPT
OF PAYMENT IS
CONTROLLING
RATHER THAN
DATE OF MAILING

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment from Dallas, Texas, to Billings, Montana, 2 days before it is due does not constitute reasonable diligence.

REINSTATEMENT
REASONABLE
DILIGENCE
FOR MAILING
OF PAYMENT

For late payment of an oil and gas lease rental to be justifiable, factors beyond the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Delay in payment resulting from improperly addressing an envelope does not justify late payment within the meaning of 30 U.S.C. 188(c) (1976).

TERMINATION -
IMPROPER
ADDRESS NOT
JUSTIFIABLE
REASON FOR
DELAY OF RENT
PAYMENT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

March 29, 1983 - Joseph F. Broda (71 IBLA 390)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, 30 U.S.C. 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment, 43 CFR 3108.2-1(c)(2).

TERMINATION -
LATE PAYMENT

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

COMPUTER SYSTEM
FAILURE NOT
JUSTIFIABLE FOR
LATE PAYMENT

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March 22, 1983 - Bryan Colley (71 IBLA 299)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental by Special Delivery Mail in New York 2 days before it was due in Billings, Montana, is considered to constitute reasonable diligence.

REASONABLE
DILIGENCE IS
USE OF SPECIAL
DELIVERY MAIL

March 28, 1983 - Tenneco Oil Co. (71 IBLA 339)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Breakdowns in a lessee's procedures for handling rental payments resulting from internal changes in its operations do not establish justification for a late rental payment.

TERMINATION -
CHANGE IN OFFICE
PROCEDURES FAILS
TO JUSTIFY
LATE PAYMENT

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

March 24, 1983 - Energetics, Inc. 71 IBLA 331)
Oil and Gas Leases: Reinstatement

Under 30 U.S.C. 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the address of the proper office for making payment, the use of an incorrect address is not justified. A lessee has not been reasonably diligent where it twice sends payment using the incorrect address even though mailed before the due date, when the correctly addressed payment is not mailed until after the due date.

TERMINATION -
USE OF INCORRECT
ADDRESS NOT
REASONABLE
DILIGENCE
FOR RECEIPT OF
PAYMENT AFTER
DUE DATE

February 4, 1983 - Bernard Kosik (70 IBLA 373)
Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
Cancellation

A bona fide purchaser must have acquired his interest in good faith, for valuable consideration, and without notice of a violation of Departmental regulation. The protection of a bona fide purchaser of an oil and gas lease applies only where consideration has been paid before notice of cancellation of the lease has been received by the lessor and has become part of BLM's records.

BONA FIDE
PURCHASER -
PROTECTION

January 11, 1983 - Deck Oil Co. (70 IBLA 97)
Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified where an employee of lessee did not understand the time constraints governing the time for payment.

TERMINATION -
EMPLOYEE LACK
OF KNOWLEDGE OF
TIME CONSTRAINTS
NOT REASONABLE
DILIGENCE

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

December 21, 1982 - Gulf Oil Corp. (69 IBLA 263)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. An accidental deviation in a lessee's normal payment procedure which results in payment being misdirected to the wrong Bureau of Land Management office is not a circumstance outside the lessee's control.

TERMINATION
LATE PAYMENT
DUE TO RENT
SENT TO
WRONG OFFICE

November 29, 1982 - Donald L. Darrow (69 IBLA 62)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment the day it is due does not constitute reasonable diligence.

TERMINATION -
LATE PAYMENT

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. The fact that appellant "commutes" to his place of business in California from his home in Illinois, does not justify late payment.

COMMUTING
DISTANCE BETWEEN
HOME AND WORK
NOT JUSTIFIABLE
REASON FOR
LATE PAYMENT

November 24, 1982 - Fortune Oil Co. (69 IBLA 13)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
Cancellation

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease notwithstanding the fact that the later lease has been assigned to parties claiming bona fide purchaser status. An assignee can stand in no better position than the assignor.

CANCELLATION -
LEASE IMPROPERLY
ISSUED ON LANDS
IN EXISTING
LEASE; NO BONA
FIDE PURCHASER
PROTECTION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

November 4, 1982 - Richard C. Hubbard (68 IBLA 170)
Oil and Gas Leases: Termination

Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

TERMINATION -
FAILURE TO
RECEIVE COURTESY
NOTICE

September 24, 1982 - Peter R. Buehler (67 IBLA 242)
Oil and Gas Leases: Reinstatement

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental after it was due does not constitute reasonable diligence. Late payment is not justified by the fact that the lessee did not receive a courtesy notice from the BLM, or the fact that he received erroneous advice from BLM employees.

TERMINATION -
CANNOT RELY ON
COURTESY NOTICE
NOT RECEIVED OR
BLM EMPLOYEE
ERRONEOUS ADVICE

September 9, 1982 - Kristie R. Cobb (67 IBLA 59)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

A check which is negotiable by a party other than the BLM does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

TERMINATION -
NON-NEGOTIABLE
CHECK

Where the BLM returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

SUBSTITUTE
RENT PAYMENT
RECEIVED LATE

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing payment to the BLM after it is due does not constitute reasonable diligence
(continued)

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the BLM is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

TERMINATION -
LATE PAYMENT
DUE TO ORIGINAL
NON-NEGOTIABLE
CHECK NOT A
JUSTIFIABLE
REASON FOR
LATE PAYMENT

September 8, 1982 - Zions First National Bank (67 IBLA 43)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

TERMINATION -
PROBATE LAWSUIT
CONFUSION NOT
JUSTIFIABLE
REASON FOR
LATE PAYMENT

July 20, 1982 - Victory Land and Exploration Co. (65 IBLA 373)
Oil and Gas Leases: Reinstatement

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may petition to have the lease reinstated on the grounds that reasonable diligence was exercised or that the late payment was justified.

REINSTATEMENT -
POTENTIAL
ASSIGNEE CANNOT
FILE PETITION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

June 23, 1982 - Richard W. Eckels (On Reconsideration)
(65 IBLA 76)

Oil and Gas Leases: Bona Fide Purchaser

The protection afforded a bona fide purchaser of an oil and gas lease applies only where consideration has been paid. An unperformed obligation to pay the assignor is not generally sufficient value. Receipt by the purchaser of notice that a lease is subject to cancellation prior to payment of the obligation to the assignor which the purchaser has assumed will bar bona fide purchaser status even if the assignee thereafter pays the obligation.

BONA FIDE
PURCHASER -
PROTECTION
BARRED BY
RECEIPT OF
NOTICE BY
PURCHASER

June 17, 1982 - Trend Resources Limited (64 IBLA 383)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

TERMINATION -
COMPUTER FAILURE
DISCOVERED AFTER
DUE DATE NOT
JUSTIFIABLE
REASON FOR
LATE PAYMENT

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June 2, 1982 - Alminex U.S.A., Inc. (64 IBLA 274)

Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due or by a delay in receiving assignment forms which prevented shifting the responsibility for lease payment prior to the anniversary date.

TERMINATION -
FAILURE TO
RECEIVE COURTESY
NOTICE AND
ASSIGNMENT FORMS
TO TRANSFER
LEASE NOT
JUSTIFIABLE FOR
LATE PAYMENT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 23, 1982 - Gulf Oil Corp. (63 IBLA 296)
Oil and Gas Leases: Reinstatement

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. 188(b) (1976).

REINSTATEMENT -
LEASES ISSUED
AFTER SEPT. 2,
1960, NEED
TIMELY PAYMENT
OF 6TH/11TH YEAR
RENT TO CONTINUE
OPERATIONS

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. 188(d) (1976) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. 226(e) (1976) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. 188(c) (1976).

REINSTATEMENT -
DISCRETIONARY
FOR LEASES
ISSUED BEFORE
SEPT. 2, 1960,
WHEN DRILLING
COMMENCED OVER
EXPIRATION DATE

April 22, 1982 - Martin Exploration Management Corp.
(63 IBLA 287)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Regulations: Generally

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelope, is not a justifiable excuse.

TERMINATION -
INCORRECT
MAILING ADDRESS
FOR PAYMENT NOT
JUSTIFIABLE FOR
LATE PAYMENT

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

PERSONS DEALING
WITH GOVERNMENT
PRESUMED TO KNOW
REQUIREMENTS

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

March 16, 1982 - Ervin Staacke et al. (62 IBLA 278)

January 28, 1982 - James Koch et al. (61 IBLA 235)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
Cancellation

An assignee of a Federal oil and gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. 184(h)(2) (1976); 43 CFR 3102.1-2.

BONA FIDE
PURCHASER -
PROTECTION

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

BONA FIDE
PURCHASER
DEFINITION

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. 184(h) (1976) and 43 CFR 3102.1-2(b).

CANCELLATION -
OVERRIDING
ROYALTY INTEREST
VOIDABLE AND
NOT UNDER
BONA FIDE
PURCHASER
PROTECTION

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March 4, 1982 - J. M. Dunbar, A. G. Andrikopoulos
(62 IBLA 119)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas
Leases: Relinquishments

Where a lessee relinquishes an oil and gas lease, he is exercising a right given by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

RELINQUISHMENT
RIGHT OF LAW
THAT BLM CANNOT
INTERFERE

(continued)

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

BONA FIDE
PURCHASER -
INTEREST NOT
PROTECTED

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February 25, 1982 - David E. Cooley, Jr. (62 IBLA 87)
Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's inadvertent misplacement of office records during the changeover in his office location.

TERMINATION -
LATE PAYMENT
CAUSED BY
MISPLACED OFFICE
RECORDS NOT
JUSTIFIABLE FOR
LATE PAYMENT

February 23, 1982 - James M. Chudnow (62 IBLA 13)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

TERMINATION -
IGNORANCE OF LAW
AND TRIP NOT
JUSTIFIABLE FOR
LATE PAYMENT

February 2, 1982 - Thomas H. Wilson (61 IBLA 287)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

TERMINATION -
FAMILY ILLNESS
OF EMPLOYEE AND
OVERBURDEN OF
BUSINESS MATTERS
NOT JUSTIFIABLE
REASON FOR LATE
RENTAL PAYMENT

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

January 28, 1982 - Getty Oil Co. (61 IBLA 226)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

TERMINATION -
FAILURE TO PAY
RENTAL INCREASE
NOT JUSTIFIABLE
REASON FOR
FAILURE TO PAY
SUFFICIENT
LEASE RENTAL
BY DUE DATE

December 18, 1981 - Ruth Eloise Brown (60 IBLA 328)

Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due. Late payment is not justified by illness or other reasons, unless a lessee demonstrates that they were causative factors for delay in immediate proximity to the anniversary date of the lease.

TERMINATION -
ILLNESS MUST BE
DEMONSTRATED TO
BE CAUSATIVE
FACTOR FOR
LATE PAYMENT

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November 30, 1981 - Max W. Young (60 IBLA 224)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the U.S. postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier. Mailing a rental payment the afternoon of the day due does not constitute reasonable diligence.

TERMINATION -
PRIVATE POSTAGE
METER DATE
CONFLICTS WITH
POSTAL SERVICE
POSTMARK DATE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

November 24, 1981 - Robert L. Wright, Shell Oil Co.

(60 IBLA 142)

Oil and Gas Leases: Rentals--Oil and Gas Leases:

Termination--Notice: Generally--Oil and Gas Leases: KGS

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only part of the annual rental due on or before the anniversary date of the lease, and if the deficiency in this payment was not nominal and did not result from any incorrect information in a rental bill or decision.

TERMINATION -
FAILURE TO PAY
FULL RENTAL
AMOUNT UPON
RENTAL INCREASE
SENT BY NOTICE

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to \$2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

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November 16, 1981 - Petrolero Corp. (60 IBLA 21)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. The fact that appellant's employee mistakenly sent the courtesy notice to a corporation which was the assignee for part of the lease does not justify late payment.

TERMINATION -
COURTESY NOTICE
SENT BY EMPLOYEE
TO ASSIGNEE
NOT JUSTIFIABLE
REASON FOR
LATE PAYMENT

November 9, 1981 - Dome Petroleum Corp. (59 IBLA 370)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, where the lessee has entrusted payment to an employee who is hospitalized because of an injury, and another employee who assumes the injured employee's responsibilities fails to make timely payment, the injury of the employee is not the proximate cause of the late payment.

TERMINATION -
DUTIES OF ILL
EMPLOYEE ASSUMED
BY ANOTHER
EMPLOYEE WITH
FAILURE TO PAY
RENTAL TIMELY
NOT JUSTIFIABLE
REASON

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

September 16, 1981 - York Associates, Ltd. (58 IBLA 25)
 Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
 Cancellation

Where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

BONA FIDE
 PURCHASER -
 SENIOR OFFER
 REVEALED BY
 PLAT RECORDS
 PROVIDES NO
 PROTECTION TO
 ASSIGNEE

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July 22, 1981 - David Burr et al. (56 IBLA 225)
 Oil and Gas Leases: Bona Fide Purchaser

An assignee of a Federal oil and gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. 184(h)(2) (1976); 43 CFR 3102.1-2.

BONA FIDE
 PURCHASER .
 PROTECTION

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

BONA FIDE
 PURCHASER .
 DEFINITION

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

BONA FIDE
 PURCHASER -
 RELIANCE ON
 BLM RECORDS
 PROVIDES
 PROTECTION

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July 8, 1981 - Michael Morrisroe, Jr. (56 IBLA 49)
 Oil and Gas Leases: Reinstatement

Absence from the country at the time payment is due on a lease does not justify late payment of the rental. Early payment or other arrangements could be made to ensure timely payment.

TERMINATION -
 LATE PAYMENT NOT
 JUSTIFIABLE DUE
 TO ABSENCE FROM
 COUNTRY

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

June 30, 1981 - International Resource Enterprises, Inc.
(55 IBLA 386)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. The fact that a lessee's accountant, responsible for submitting the rental payment is overburdened with work will not justify reinstatement.

TERMINATION -
OVERBURDENED
ACCOUNTANT NOT
JUSTIFIABLE
REASON FOR
LATE PAYMENT

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April 28, 1981 - Wilbur G. Desens et al. (54 IBLA 271)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
Cancellation

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

BONA FIDE
PURCHASER -
INDICATION IN
BLM RECORDS OF
NO DEFECT NOR
PROTEST PROVIDES
PROTECTION TO
ASSIGNEE

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. 184(h) (1976) and 43 CFR 3102.1-2(b).

CANCELLATION -
OVERRIDING
ROYALTY INTEREST
VOIDABLE AND
NOT UNDER
BONA FIDE
PURCHASER
PROTECTION

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter.

REMOTE PURCHASER
PROTECTION

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 10, 1981 - Frederick J. Schlicher (54 IBLA 61)
Oil and Gas Leases: Bona Fide Purchaser

Under 30 U.S.C. 184(h) (1976), the determination whether an assignee of an oil and gas lease is a bona fide purchaser must be based on the circumstances existing on the date the assignment is effective between the lessee of record and the assignee. An assignee is not required to file the assignment with BLM for approval as a condition of bona fide purchaser status.

BONA FIDE
PURCHASER -
EFFECTIVE DATE
BETWEEN ASSIGNEE
AND ASSIGNOR IS
CONDITION FOR
PROTECTION

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March 26, 1981 - Mary A. Barnett (53 IBLA 328)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When the lessee makes a sufficient showing that rental payment for an oil and gas lease was mailed 15 days before the date it is due, the lease will be reinstated because the late filing was not due to a lack of reasonable diligence.

REINSTATEMENT
REASONABLE
DILIGENCE BY
SUFFICIENT
SHOWING OF
TIMELY
TRANSMITTAL

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March 12, 1981 - Jack J. Grynberg (53 IBLA 165)
Administrative Authority: Estoppel--Estoppel--Federal
Employees and Officers: Authority to Bind Government--Oil
and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

TERMINATION -
MAILED PAYMENT
LOST

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the Government from regarding the lease as having terminated.

ERRONEOUS
ACCEPTANCE OF
RENT PAYMENT A
YEAR LATER DOES
NOT PREVENT
TERMINATION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

February 3, 1981 - Energetics, Inc. (52 IBLA 236)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

An oil and gas lease, terminated by operation of law for failure to timely pay the annual rental, will not be reinstated where the lessee mailed the rental payment to the wrong BLM office, where that office returned the payment in sufficient time for lessee to make timely payment in the proper office, but where the lessee failed to do so.

TERMINATION -
MAILED TO
WRONG OFFICE

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January 13, 1981 - Elizabeth A. Christensen (52 IBLA 113)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Speculation as to errors in post office mail processing does not constitute such extenuating circumstances as to make untimely payment of annual rental justified.

TERMINATION -
POSTAL SERVICE
MAIL PROCESSING
ERRORS NOT
JUSTIFIABLE
REASON FOR
LATE PAYMENT

January 12, 1981 - Stan F. Waliszek (52 IBLA 101)

Oil and Gas Leases: Reinstatement

The burden of proving that reasonable diligence was exercised or the lack of diligence was justified rests on the lessee. Where a lessee states that he mailed the rental payment to the proper BLM office well in advance of the due date but presents no corroborating evidence of the attempted payment, an oil and gas lease reinstatement petition is properly denied.

TERMINATION -
FAILURE TO
CORROBORATE
TIMELY MAILING
IN ADVANCE OF
DUE DATE

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January 6, 1981 - Husky Oil Co., Pan Eastern Exploration Co.
(52 IBLA 41)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
Cancellation

Where an oil and gas lease has inadvertently been issued for land, which was the subject of a then current lease in good standing and the newly issued lease is properly canceled, there is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land in value equal thereto.

BONA FIDE
PURCHASER -
NO PROTECTION
TO ASSIGNEE
FOR IMPROPERLY
ISSUED LEASE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

December 29, 1980 - Virgil T. Hartquist (51 IBLA 356)
 Oil and Gas Leases: Termination--Oil and Gas Leases:
 Reinstatement

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a discrepancy as to total acreage exists between the parcel listing and lease, BLM notifies the lessee at his address of record of the correct amount and the notice is returned as not deliverable, and the lessee, relying on the advice of his leasing service and landman, submits the incorrect amount.

TERMINATION -
 ACREAGE CHANGE

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July 28, 1980 - Rose M. Keegel (49 IBLA 106)
 Accounts: Payments--Oil and Gas Leases: Rentals--Payments:
 Generally

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas lease in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

TERMINATION -
 TENDER OF RENTAL
 PAYMENT DOES NOT
 OCCUR UNTIL
 PAYMENT RECEIVED

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June 26, 1980 - David Faskin (48 IBLA 258)
 Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

A delay by BLM in notifying an oil and gas lessee that his lease has terminated because he has failed to pay all of the rental due on or before the anniversary date of the lease does not extend the viability of the lease in order to allow him to pay the balance of the rental, as the lease had already terminated automatically by operation of law, without any administrative act, deed, or decision.

TERMINATION -
 PAYMENT MORE
 THAN NOMINALLY
 DEFICIENT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

June 9, 1980, - POI Energy, Inc. (48 IBLA 197)

Oil and Gas Leases: Reinstatement

A lessee whose oil and gas leases terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payments on October 29 when they were due on Nov. 1, and the leases should therefore be granted reinstatement.

REINSTATEMENT -
REASONABLE
DILIGENCE
EXERCISED

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May 27, 1980 - Deane A. Dunham (48 IBLA 7)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:

Rentals--Oil and Gas Leases: Termination

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment. Where a lessee submits his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank when the check is presented for payment, the lessee has not exercised reasonable diligence. Where the lessee provides no evidence that the rental check was dishonored through the fault of someone other than the lessee, there is no basis for reinstatement of the lease.

TERMINATION -
UNCOLLECTIBLE
PAYMENT

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March 31, 1980 - Western Reserves Oil Co. (46 IBLA 295)

Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. 188(c) (1976).

REINSTATEMENT -
LATE PAYMENT
FOR JUSTIFIABLE
REASONS

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

December 19, 1979 - Phyllis Lane Zehr, Alice M. Conte
(44 IBLA 261)

Evidence: Generally--Oil and Gas Leases: Reinstatement

Ordinarily, the postmark on a letter will be assumed to indicate the date and place of mailing in the absence of evidence to the contrary. Reasonable diligence is found where a rental payment, due in Billings, Montana, on June 1, 1979, was actually mailed from Wilmington, Delaware, on May 29, 1979, despite the fact that the envelope containing such payment bears only a Billings, Montana, postmark of June 2, 1979.

REINSTATEMENT -
POSTMARK FROM
LOCATION MAILED
FROM MISSING

February 29, 1980 - Harold W. Fullerton (46 IBLA 116)
Oil and Gas Leases: Reinstatement

Placing payment for annual rental for an oil and gas lease in a residential mailbox for posting by the Postal Service without later checking to insure that the payment was picked up does not constitute reasonable diligence, especially when the lessee's regular mail delivery is to a different address. Failure of the payment to then be timely made is not justified, even though the Postal Service admittedly was not making regular stops at that mailbox, because timely payment was still within the lessee's control through the exercise of reasonable diligence.

TERMINATION -
USE OF POSTAL
SERVICE

November 30, 1979 - Norman C. Stroink (44 IBLA 188)
Oil and Gas Leases: Termination--Oil and Gas Leases:
Reinstatement

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A lessee's suffering severe, incapacitating injuries during the month before the anniversary date of the lease may constitute proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

REINSTATEMENT -
SEVERE INJURIES
JUSTIFIABLE
REASON FOR
LATE PAYMENT

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

November 30, 1979 - B. J. Bradshaw - (44 IBLA 181)
Estoppel--Oil and Gas Leases: Relinquishments--Oil and Gas
Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities will automatically terminate on the anniversary date of the lease upon failure of lessee to pay the minimum annual rental, despite a partial payment submitted on the basis of a partial relinquishment, which was ineffective because [it was] not filed by the record title holder pursuant to 43 CFR 3108.1, and despite issuance of a Bureau of Land Management decision subsequent to the anniversary date confirming a decreased annual rental.

TERMINATION -
PARTIAL PAYMENT
BASED ON PARTIAL
RELINQUISHMENT
THAT WAS NOT
ACCEPTABLE

November 30, 1979 - Tenneco Oil Co., Cordillera Corp.
(44 IBLA 171)
Oil and Gas Leases: Extensions--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination--Rules of Practice:
Appeals: Effect of

An oil and gas lease in its extended term because of the termination of an approved unit plan to which it was committed, on which lease there is no well capable of production in paying quantities, terminates automatically by operation of law where the annual rental is not paid on or before the anniversary date of the lease. The pendency of an appeal regarding the termination date of the extension does not excuse the failure to maintain the lease in good standing by timely payment of the annual rental.

TERMINATION -
LEASE IN
EXTENDED TERM
DUE TO UNIT
TERMINATION
FAILS TO MAKE
RENTAL PAYMENT
BY DUE DATE

There is no authority to suspend an oil and gas lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the lease where no application for suspension was filed before the lease terminated.

NO AUTHORITY
TO SUSPEND
TERMINATED LEASE
IF REQUEST TO
SUSPEND NOT MADE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

November 27, 1979 - Agnes James (44 IBLA 133)

Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where, for the first time on appeal, there are assertions concerning the death of lessee's husband, the case will be remanded to BLM for an initial determination as to whether circumstances demonstrate the requisite proximity and causality to justify the delay in payment, and reinstatement of the lease.

REINSTATEMENT
DEATH OF
LESSEE'S
HUSBAND

October 29, 1979 - Reid E. Motley (43 IBLA 360)

Oil and Gas Leases: Reinstatement--Reinstatement:

Generally--Words and Phrases

The fact that a courtesy rental notice did not come to oil and gas lessee's attention until 1 day prior to rental due date is not a justifiable excuse for late payment of the rental.

TERMINATION -
AWARENESS OF
COURTESY NOTICE

October 10, 1979 - William A. Klug (43 IBLA 255)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:

Rentals--Rules of Practice: Appeals: Burden of Proof

The burden of showing that late payment of annual rental for an oil and gas lease is justifiable is on the lessee. An assertion of personal reasons without further explanation, is insufficient to meet this burden. Nor does reliance on receipt of a courtesy notice justify failure to pay rental timely.

TERMINATION -
PERSONAL REASONS
WITHOUT FURTHER
EXPLANATION NOT
JUSTIFIABLE FOR
LATE PAYMENT

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September 11, 1979 - Fuel Resources Development Co.
(43 IBLA 19)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:

Rentals--Oil and Gas Leases: Termination

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a breakdown in mailing procedures within the parent company of the lessee, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

TERMINATION -
BREAKDOWN OF
COMPANY MAIL
PROCEDURES NOT
JUSTIFIABLE FOR
LATE PAYMENT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

August 27, 1979 - William M. Steiskal (42 IBLA 304)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rental

Reliance on receipt of a courtesy billing notice from BLM is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

TERMINATION -
DELAY IN RECEIPT
OF COURTESY
NOTICE NOT
JUSTIFIABLE FOR
LATE PAYMENT

August 27, 1979 - Victor Holz (42 IBLA 284)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

Where a lessee presents no evidence that illness of a family member or a heavy work load were so disruptive as to prevent him from carrying on his other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by the illness or the work.

TERMINATION -
NO EVIDENCE THAT
FAMILY MEMBER
ILLNESS WAS
JUSTIFIABLE FOR
LATE PAYMENT

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August 22, 1979 - Coronado Oil Co. (42 IBLA 235)

Administrative Procedure: Hearings--Hearings--Oil and Gas
Leases: Extensions--Oil and Gas Leases: Termination--Oil
and Gas Leases: Well Capable of Production--Rules of
Practice: Hearings

A hearing is properly ordered where there exist issues of fact the resolution of which will determine whether an oil and gas lease concluding its primary term was converted from rental status to royalty status. Appellant shall have the burden of proof to establish by a preponderance of the evidence (a) that the Dolezal-Government #1 well was capable of producing oil and gas in paying quantities on October 31, 1978, or (b) that there was a discovery of oil or gas in paying quantities on lease W 15891 on October 31, 1978. If either (or both) of these propositions is established, the subject lease was not subject to automatic termination by law for failure to make timely rental payment.

TERMINATION -
DETERMINATION
WHETHER LEASE
WENT INTO
PRODUCTION
PRIOR TO
RENTAL DUE DATE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

June 28, 1979 - Geosearch Inc. (41 IBLA 291)

Oil and Gas Leases: Bona Fide Purchaser

A decision by BLM dismissing protests against the continued validity of the leases because the assignees are bona fide purchasers will be vacated where the record contains no statement by the assignees of oil and gas leases that they are bona fide purchasers, and the matter will be remanded so that BLM may join the assignees to the protest proceedings in order to give them the opportunity to show that they acquired the interest as bona fide purchasers, and to give the protestant the opportunity to present prima facie evidence to the contrary, per 43 CFR 3102.1-2(c). Where the assignees have alleged that they are bona fide purchasers, it is up to the protestant to show prima facie to the contrary.

BONA FIDE
PURCHASER -
DETERMINATION
OF PROTECTION

April 18, 1979 - Allied Chemical Corp. et al. (40 IBLA 272)

Oil and Gas Leases: Cancellation

An oil and gas lease issued on July 1, 1951, is not controlled by P.L. 83-555, effective July 29, 1954, and the lease therefore does not terminate automatically by operation of law if annual rental is not paid timely, as this law does not apply retroactively to the lease in the absence of written notice from the lessees that they have elected to subject their lease to this law. Rather, the mineral leasing law in effect prior to July 29, 1954, controls, under which the lessees' failure to pay annual rental subjects the lease to cancellation only after BLM gives them 30 days notice of their failure to pay the rental timely. BLM's decision canceling such lease will be vacated where it did not give the lessees the required notice.

CANCELLATION -
LEASES SUBJECT
TO P.L. 83-555
DO NOT TERMINATE
AUTOMATICALLY BY
OPERATION OF LAW

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March 29, 1979 - Merle C. Chambers (40 IBLA 144)

Oil and Gas Leases: Cancellation

An oil and gas lease issued for land available for leasing, but in violation of an administrative regulatory requirement, need not be canceled in the absence of an intervening qualified applicant or some overriding policy consideration.

CANCELLATION -
VIOLATION OF
ADMINISTRATIVE
REGULATORY
REQUIREMENT MAY
NOT RESULT IN
CANCELLATION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

December 14, 1978 - Benjamin T. Franklin (38 IBLA 291)

Accounts: Payments--Oil and Gas Leases: Reinstatements--Oil and Gas Leases: Termination--Payments: Generally

Where checks submitted in payment of annual rental on oil and gas leases are returned by the drawee bank as uncollectible because they are postdated, and there has been no bank error, no tender or payment of annual rental has been made. In the absence of any other payment prior to the anniversary date, the leases terminate automatically by operation of law.

TERMINATION -
POSTDATED
CHECK RETURNED
BY BANK NOT
A TENDER OF
PAYMENT

An oil and gas lessee who submits payment of annual rentals with checks postdated by 15 days is not reasonably diligent in attempting to make payment thereof. So doing with the expectation that negotiation of the checks will not be delayed past the anniversary date unreasonably anticipates either that BLM will withhold processing the checks until they become valid or that the drawee bank will honor them despite the postdating.

POSTDATING
CHECKS NOT
REASONABLE
DILIGENCE

The inadvertent error of a person entrusted to mail payments for an oil and gas lease is not a justifiable excuse for delay in making the payment to warrant reinstatement of a terminated lease.

The absence of a lessee on vacation does not justify a failure to make timely rental payment.

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December 13, 1978 - Robert A. Chenoweth (38 IBLA 285)

Oil and Gas Leases: Cancellation--Oil and Gas Leases: Bona Fide Purchaser

Where a decision canceling an oil and gas lease has been issued by BLM and received at the lessee's address of record, any subsequent assignment of the lease will not be protected under the provisions of 30 U.S.C. 184(i) (1976), and whether or not the purported assignee is a bona fide purchaser is a moot question.

BONA FIDE
PURCHASER -
RECEIPT OF
CANCELLATION
DECISION BARS
PROTECTION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

December 8, 1978 - Lillie Belle Higgins (38 IBLA 254)
 Accounts Payments--Oil and Gas Leases: Rentals--Oil and Gas
 Leases: Termination--Payments: Generally--Words and Phrases

"Reasonable diligence" Where an oil and gas rental check bearing the due date of the lease is submitted a few days in advance thereof, but the check is returned by the BLM and thereupon a new check is promptly submitted, even if it could be considered that the lease had terminated, it would be eligible for reinstatement under 30 U.S.C. 188(c) (1976) because there has been reasonable diligence on the part of lessee.

REASONABLE
 DILIGENCE -
 DEFINITION

October 11, 1978 - Ram Petroleums, Inc., & Ramoco, Inc.
 (37 IBLA 184)
 Oil and Gas Leases: Reinstatement

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must show that the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. Negligence of an employee in making timely rental payments and subsequent false statements to her employer that timely payments were made does not relieve the employer from responsibility to verify the employee's action and to make timely payment.

REINSTATEMENT -
 EMPLOYEE
 NEGLIGENCE/FALSE
 STATEMENTS NOT
 JUSTIFIABLE
 REASON FOR
 LATE PAYMENT

August 28, 1978 - Mercedes M. Peratt (36 IBLA 331)
 Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
 Rentals

An oil and gas lease terminated by operation of law for failure to pay advance rental timely will be reinstated when lessee shows that failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence in that payment was mailed in California 6 days before due in Wyoming State Office.

REINSTATEMENT -
 REASONABLE
 DILIGENCE SHOWN
 BY TIMELY
 MAILING BEFORE
 DUE DATE

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

August 15, 1978 - John D. Holt (36 IBLA 257)
Gas Leases: Reinstatement

Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment considering the distance involved. Where a letter is mailed on February 25 from Windom, Minnesota, to Cheyenne, Wyoming, where it is due on March 1, reasonable diligence has been exercised.

REINSTATEMENT -
REASONABLE
DILIGENCE SHOWN
BY TIMELY
MAILING BEFORE
DUE DATE

August 3, 1978 - Hubert W. Scudder, Eileen Scudder
(36 IBLA 191)
Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where the death of a lessee's father occurs on February 28, the rent is mailed no earlier than February 28, and the rent is due and payable on March 1, the requisite proximity and causality to justify the delay in payment is not demonstrated.

TERMINATION -
FATHER'S DEATH
DAY PRIOR TO
DUE DATE NOT
JUSTIFIABLE
REASON FOR
LATE PAYMENT

July 31, 1978 - American Resources Management Corp.
(36 IBLA 157)
Oil and Gas Leases: Termination

The automatic termination provision in sec. 31 of the Mineral Leasing Act, as amended, does not apply to a situation where, due to other contingencies, additional rental may become due on a date other than the anniversary date of a lease.

TERMINATION -
NOT APPLICABLE
WHEN ADDITIONAL
RENT DUE ON
DAY OTHER THAN
ANNIVERSARY DATE

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

June 30, 1978 - Frederick C. Farrington, George M. Hoffman
(36 IBLA 70)

Agency--Oil and Gas Leases: Reinstatement--Oil and Gas
Leases: Rental--Oil and Gas Leases: Termination

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must generally show the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. The following are not ordinarily justifiable excuses: (1) reliance on receipt of a courtesy notice of rental; (2) selling a house and moving to another; (3) failure to show a causal link between the illness of lessee's friend and the failure to pay timely.

TERMINATION -
REASONS NOT
JUSTIFIABLE FOR
LATE PAYMENT

In the absence of joint lessees establishing the existence of a prior agreement that a particular lessee was responsible for payment of the oil and gas lease rental, the failure of the joint lessees to pay the rental timely is a joint failure and the joint lessees must each satisfy the reinstatement requirements of 30 U.S.C. 188(c) (1970). In the absence of reasonable diligence, the lease cannot be reinstated unless each joint lessee can show that he has a justifiable excuse for failing to pay the rental timely.

TERMINATION -
JOINT LESSEES
FAILURE TO
TIMELY PAY
ANNUAL RENTAL
MUST BOTH
SATISFY
REINSTATEMENT
REQUIREMENTS

June 2, 1978 - Pacific Transmission Supply Co. (35 IBLA 297)
Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State Office can credit the payment to the proper lease account. However, where an appellant demonstrates that the rental money was received timely by the appropriate State Office, and the evidence indicates that the lessee subsequently gave timely and proper instructions as to its application, the lease is properly deemed to have not terminated.

TERMINATION -
PROPER IDENTITY
OF RENT PAYMENT
RECEIVED TIMELY
PREVENTS LEASE
TERMINATION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

May 26, 1978 - Robert W. David (35 IBLA 205)
Oil and Gas Leases: Cancellation

An oil and gas offer describing land which cannot be encompassed within a 6-mile square is defective and must be rejected, and where a lease is issued for part of the land embraced in the offer it must be canceled as to that land which is embraced in a proper offer filed prior to the issuance of the lease in order that the statutory preference right of the party first making a proper offer may be honored.

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR
LANDS OUTSIDE
6-MILE SQUARE
AREA WITH A
PROPER OFFER ON
PART OF LANDS

May 22, 1978 - Emma Pace (35 IBLA 143)
Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated automatically by operation of law for failure to pay rental timely, may be reinstated if, among other things, the failure to pay timely was justifiable or not due to a lack of reasonable diligence on the part of the lessee. Mailing the rental payment after the due date does not constitute reasonable diligence. An automobile accident occurring 25 days before the rental was due is not a justifiable reason for reinstating the lease where it is not shown that its occurrence prevented the lessee from making timely payment. Reliance on receipt of a courtesy notice does not justify failure to pay rental timely.

TERMINATION -
AUTOMOBILE
ACCIDENT WELL
BEFORE DUE DATE
NOT JUSTIFIABLE
REASON FOR
LATE PAYMENT

May 10, 1978 - Hubert W. Scudder (35 IBLA 58)
Oil and Gas Leases: Reinstatement

Failure to pay oil and gas lease rental timely may be justifiable where it was caused by factors outside the lessee's control which were the proximate cause of the late payment. A lessee's head injuries requiring hospitalization during the month before the anniversary date of the lease constitutes proximate cause sufficient to justify late payment of the rental and to warrant reinstatement of the lease.

TERMINATION -
HEAD INJURIES
AND HOSPITAL
CARE DURING
MONTH BEFORE
DUE DATE JUSTIFY
REINSTATEMENT

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 26, 1978 - C. H. Winters (34 IBLA 350)
Oil and Gas Leases: Reinstatement

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Where the lessee has gone on a trip intending to return by mid-month but is delayed by the necessity of caring for an old and ill friend whom he visited, so that he does not return until the first of the next month, the anniversary date of the lease, his failure to pay the rental timely is justifiable and the lease is to be reinstated.

TERMINATION -
TRIP EXTENSION
TO CARE FOR ILL
FRIEND JUSTIFIES
REINSTATEMENT

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March 8, 1978 - Albert R. Fairfield (34 IBLA 132)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

Where a lessee presents no evidence that illnesses of his family members were so disruptive as to prevent him from carrying on his employment and other routine activities as usual, the late payment of rental on an oil and gas lease is not justified by these illnesses.

TERMINATION -
FAMILY MEMBER
ILLNESSES NOT
SUFFICIENTLY
DISRUPTIVE TO
JUSTIFY LEASE
REINSTATEMENT

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January 5, 1978 - Genevieve C. Aabye (33 IBLA 285)
Oil and Gas Leases: Reinstatement

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Severe winter weather and other circumstances which prevent the lessee from mailing the rental payment in a timely fashion constitute such a factor which renders the failure to pay the rental timely justifiable.

REINSTATEMENT -
SEVERE WINTER
WEATHER AND
OTHER CAUSES
THAT PREVENT
TIMELY PAYMENT
ARE JUSTIFIABLE
REASONS

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September 12, 1977 - Duncan Miller (32 IBLA 137)
Oil and Gas Leases: Cancellation

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired lands owned by the United States are subject to leasing under that Act.

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR
MINERALS NOT
ACQUIRED BY U.S.

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

July 22, 1977 - Pauline V. Triqq, John H. Triqq (31 IBLA 296)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

Where it is alleged that a bank erroneously dishonored a check drawn thereon, and an official of the bank admits that the payment was refused by mistake, the error of the bank will not vitiate the otherwise proper payment of rent.

TERMINATION -
BANK ERROR WILL
NOT RESULT IN
TERMINATION

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March 4, 1977 - Read & Stevens, Inc.; Franklin, Aston & Fair, Ltd.; and Colorado Interstate Gas Company (29 IBLA 154)
Oil and Gas Leases: Generally--Oil and Gas Leases:
Reinstatement--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Dismissal

An appeal to the Board of an automatic termination of an oil and gas lease will be dismissed as not ripe where appellant sends the appeal to the Board before a Notice of Termination of Lease has been issued and a Petition for Reinstatement rejected by the State Office, Bureau of Land Management.

TERMINATION -
PREMATURE APPEAL
PRIOR TO
RECEIPT OF
NOTICE

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February 23, 1977 - Billy Wright (29 IBLA 81)
Oil and Gas Leases: Reinstatement

An oil and gas lease terminated by operation of law for failure of the lessee to pay the annual rental on or before the anniversary date of the lease may be reinstated only if the late payment is justifiable or not due to a lack of reasonable diligence. Where information concerning the terminal illness of lessee's brother demonstrates the requisite proximity and causality to justify the delay in payment, the lease may be reinstated.

REINSTATEMENT -
TERMINAL ILLNESS
OF LESSEE'S
BROTHER
JUSTIFIABLE FOR
LATE PAYMENT

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February 8, 1977 - Howard S. Bugbee (29 IBLA 30)
Oil and Gas Leases: Applicability--Oil and Gas Leases:
Cancellation

Where a regulation is amended in a way that benefits an oil and gas lessee, the Department may, in the absence of intervening rights of third parties or prejudice to the interests of the United States, apply the amendment to pending cases.
(continued)

CANCELLATION -
APPLY AMENDED
REGULATION TO
BENEFIT LESSEE
WITH LEASE NOT
CANCELED

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

Cancellation of an oil and gas lease pursuant to statute, 30 U.S.C. 188(b) (1970), and the regulation promulgated thereunder is discretionary and not mandatory. An oil and gas lease need not be canceled because of the failure of the lessee to file a structure bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of the rights of third parties and no adverse impact on the interest of the United States.

CANCELLATION -
DISCRETIONARY IF
NO THIRD PARTY
RIGHTS IMPAIRED
AND NO IMPACT ON
U.S. INTERESTS

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February 7, 1977 - Oil Resources Inc. (28 IBLA 394)

Oil and Gas Leases: Rentals--Oil and Gas Leases:

Reinstatement--Oil and Gas Leases: Termination--Words and Phrases

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. 226(e) (1970) on or before the regular anniversary date of the lease. Failure to submit the rental timely will result in the automatic termination of the lease by operation of law under 30 U.S.C. 188(b) (1970). Unless the lessee can show that he is entitled to reinstatement of this lease under 30 U.S.C. 188(c) (1970), he cannot obtain the extension.

TERMINATION -
FAILURE TO PAY
6TH/11TH YEAR
RENTAL FOR
EXTENDED TERM
FOR POST-
SEPT. 2, 1960,
LEASES

"Cancellation" and "termination." The "cancellation" and the "termination" of oil and gas leases are separate, distinct concepts. Cancellation requires a specific act by the Department authorized by various statutes. Termination under 30 U.S.C. 188(b) (1970) is automatic, occurring by operation of law when the lessee fails to pay his rental timely.

CANCELLATION
TERMINATION .
DISTINCT
DIFFERENCES

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December 27, 1976 - Agnes M. French (28 IBLA 282)

Oil and Gas Leases: Reinstatements

If the postmark on the rental payment envelope does not demonstrate reasonable diligence in the lessee's mailing of the payment, the Board will not go beyond it in the absence of exceptional circumstances. Substantial evidence will be required to corroborate any allegation to the contrary. A mere reference to a statement indicating that a check in payment of the rent was issued or sent on a certain date is not, by itself, sufficient.

TERMINATION -
POSTMARK
EVIDENCE FAILS
TO SHOW
REASONABLE
DILIGENCE

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

November 9, 1976 - Jack R. Coombs (28 IBLA 53)
Oil and Gas Leases: Cancellation

Where the Bureau of Land Management sends notice to an offeror at his record address, pursuant to 43 CFR 3103.3-1, that the first year's rental accompanying his noncompetitive oil and gas lease offer is deficient and such notice is returned to the Bureau marked "Unclaimed" by the post office, the cancellation of the lease will be set aside and the notice will not be considered to have been served on the offeror, pursuant to 43 CFR 1810.2(b), when the post office has failed to forward the notice in accordance with a request by the offeror to forward all mail and other mail has, in fact, been forwarded.

CANCELLATION -
RENT DEFICIENCY
NOTICE
MISHANDLED BY
POSTAL SERVICE
WITH LESSEE
NOT PROPERLY
SERVED

July 26, 1976 - Estate of John P. Wagner and The Superior Oil Co. (26 IBLA 119)
Oil and Gas Leases: Cancellation

The statute, 30 U.S.C. 188(b) (1970), and regulation, 43 CFR 3108.2-3, concerning the cancellation of oil and gas leases are discretionary not mandatory.

CANCELLATION -
DISCRETIONARY

It is improper to cancel an oil and gas lease for failure of the lessee to file a bond required by regulation, 43 CFR 3104.1(b), where there are extenuating circumstances and where there is no impairment of third party rights and no adverse impact on the interests of the United States.

NO IMPAIRMENT OF
THIRD PARTY
RIGHTS AND NO
IMPACT ON
U.S. INTERESTS

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July 19, 1976 - S. Norman Stark (26 IBLA 87)
Oil and Gas Leases: Cancellation

The Bureau of Land Management has no authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental on or before the anniversary date when a valid lease for the same land has been issued prior to the filing of the petition for reinstatement. Therefore, unless the first lease is deemed not to have terminated, it is erroneous to cancel the subsequent valid lease.

CANCELLATION -
ERRONEOUS TO
CANCEL VALID
LEASE IF PRIOR
LESSEE FAILED
TO PETITION FOR
REINSTATEMENT

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

July 13, 1976 - Paul D. Beard, Jr., and Leon F. Scully, Jr.
(26 IBLA 79)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental timely will be reinstated where it is shown that lessee's failure to pay the rental timely was not due to a lack of reasonable diligence. Evidence which establishes the payment due on December 1, 1975, at the Eastern States Office, BLM, Silver Spring, Maryland, was delivered to a postal carrier on November 11, 1975, is sufficient to demonstrate due diligence despite the fact that the envelope containing the payment was postmarked December 8, 1975, and not received until December 11, 1975, where a credible explanation of the delay has been furnished by the Post Office.

REINSTATEMENT -
POSTAL SERVICE
PROVIDED
CREDIBLE
EXPLANATION FOR
DELIVERY DELAY
OF RENT PAYMENT

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June 28, 1976 - John T. Stewart III, Harlan C. Altman, Jr.
(Trustee) (25 IBLA 306)

Oil and Gas Leases: Acreage Limitations--Oil and Gas Leases:
Cancellation

An oil and gas lease issued for 2,960 acres in violation of administrative regulations need not be canceled in its entirety, in the absence of an intervening qualified applicant.

CANCELLATION -
VIOLATION OF
ADMINISTRATIVE
REGULATIONS

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May 18, 1976 - A. Helander (25 IBLA 54)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals

An oil and gas lease, terminated because the advance rental was received 1 day after the due date, may be reinstated where it is shown that the lessee mailed the rental payment 3 days prior to the due date from the main post office in the same city where the BLM's field office is located and the postal authorities verify that there has been a delay in the processing of the mail at that particular time. Under these circumstances the lessee will be considered to have mailed the payment with due diligence.

REINSTATEMENT -
VERIFICATION BY
POSTAL SERVICE
OF DELAY IS
PROOF OF
DILIGENCE THAT
RENT PAID TIMELY

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

April 27, 1976 - Amerada Hess Corp. (24 IBLA 360)
Oil and Gas Leases: Cancellation

It is improper to dismiss a protest against issuance of an oil and gas lease applied for pursuant to the Act of May 21, 1930, 30 U.S.C. 301 et seq. (1970), for lands underlying a railroad right-of-way granted under the Act of Mar. 3, 1875, when the lands traversed by the right-of-way were later patented without a reservation for minerals. In such case title to the mineral estate underlying the right-of-way is no longer held by the United States and, therefore, a lease issued pursuant to the 1930 Act is void and must be canceled

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR LANDS
UNDER RAILROAD
RIGHT-OF-WAY
WITH MINERAL
ESTATE PATENTED

April 5, 1976 - Fredres E. Laubaugh (24 IBLA 306)
Oil and Gas Leases: Reinstatement

An oil and gas lease may be reinstated where it appears that the lessee's failure to pay annual rental on time is due to the death of a member of the family in close proximity to the anniversary date of the lease.

REINSTATEMENT -
FAILURE TO PAY
RENT TIMELY DUE
TO FAMILY DEATH
NEAR DUE DATE

May 8, 1975 - Joseph E. Steger (20 IBLA 206)
Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Rentals--Oil and Gas Leases: Termination

An oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated where the lessee's delay in making payment was due to his seeking clarification of an illegible notice of payment sent to the BLM, and his action demonstrates his reliance on the notice.

REINSTATEMENT -
CLARIFICATION OF
ILLEGIBLE NOTICE
RELIED ON BY
LESSEE

April 7, 1975 - David Kirkland (19 IBLA 305)
Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated by operation of law because the annual rental payment was not received until one day after the due date, may be reinstated upon proper application where the delay in payment is due to accidental injury which prevented lessee's business from being conducted in normal manner.

REINSTATEMENT -
LATE PAYMENT DUE
TO ACCIDENTAL
INJURY THAT
PREVENTED NORMAL
BUSINESS CONDUCT

H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

September 12, 1974 - Ada E. Lundgren, Norman L. Lundgren
(17 IBLA 132)

Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated because the rental was not received until eight days after the due date, may be reinstated upon proper application where the delay in paying is attributed to a sudden illness which prevented the lessee from the normal conduct of her business.

REINSTATEMENT -
SUDDEN ILLNESS
OF LESSEE
JUSTIFIABLE FOR
LATE PAYMENT

February 5, 1974 - Oil Resources Incorporated (14 IBLA 333)
Oil and Gas Leases: Bona Fide Purchaser

The protection to a bona fide purchaser of an oil and gas lease afforded by 30 U.S.C. 184(h)(2), and 184(i) (1970) is not available where the lease involved is a nullity.

BONA FIDE
PURCHASER -
NO PROTECTION IF
LEASE A NULLITY

January 23, 1974 - Margaret S. Decker (14 IBLA 215)
Oil and Gas Leases: Reinstatement--Withdrawals and
Reservations: Effect of

Where an oil and gas lease is terminated by operation of law and the lands involved are withdrawn from mineral leasing either before or after such a termination, a petition for reinstatement of the lease must be rejected, notwithstanding a finding of justifiable delay. 43 CFR 3108.2-1(c)(3).

TERMINATION -
LANDS WITHDRAWN
FROM LEASING
PREVENT LEASE
REINSTATEMENT

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January 17, 1974 - Herman A. Keller (14 IBLA 188)
Oil and Gas Leases: Bona Fide Purchaser

In order to invoke the bona fide purchaser protection afforded by the Act of September 21, 1959, 73 Stat. 571, as amended, 30 U.S.C. 184(h) (1970), as regards an oil and gas lease, the lease must have been issued; until execution and issuance of the lease, only an offer exists, and the assignment of rights in such an offer is without the purview of the bona fide purchaser provisions in the Mineral Leasing Act.

BONA FIDE
PURCHASER -
NO PROTECTION
EXISTS PRIOR TO
LEASE ISSUANCE

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

July 11, 1973 - Claude C. Kennedy 12 IBLA 183)
Oil and Gas Leases: Cancellation

Where an oil and gas lease has been issued in violation of regulations, and there is no junior offeror having intervening rights, the lease ordinarily will be permitted to stand. However, where the land is not subject to "over-the-counter" filings, a lease issued pursuant to such a filing is properly canceled.

CANCELLATION -
LEASE IMPROPERLY
ISSUED

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January 16, 1973 - Pennzoil United, Inc. (9 IBLA 88)
Oil and Gas Leases: Termination

An oil and gas lease will not be deemed to have automatically terminated under 30 U.S.C. 188(b) for failure to pay rental on or before the anniversary date of the lease when the assignor of such lease paid the rental seven months in advance, but the Bureau erroneously returned payment to assignor without notifying the assignee of the refund, even though the assignee was record holder of the title.

TERMINATION -
ERRONEOUS RETURN
OF TIMELY
PAYMENT DEEMS
LEASE NOT TO
HAVE TERMINATED

December 6, 1972 - Louis Samuel, et al., (8 IBLA 268)
Oil and Gas Leases: Reinstatement--Words and Phrases

NOTE: This is the landmark decision defining "reasonable diligence" and "justifiable delay."

"Reasonable diligence". As used in P.L. 91-245, and in 43 CFR 3108.2-1(c)(2) "reasonable diligence" in transmitting timely a rental payment for an oil and gas lease is interpreted as meaning posting the payment through the United States mail at no later date than that on which letters mailed thereon would, despite normal delays in the collection, transmittal, and delivery of mail, be delivered to the appropriate land office on or before the due date of the rental.

REASONABLE
DILIGENCE -
DEFINITION
WHEN USING
POSTAL SERVICE

"Justifiable Delay". As used in P.L. 91-245, "justifiable delay" in making an oil and gas lease rental payment will be recognized only where sufficiently extenuating circumstances are present so as to affect the lessee's actions.

JUSTIFIABLE
DELAY -
DEFINITION

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

September 25, 1972 - Roy W. Reed (7 IBLA 321)

Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Relinquishment

There is no authority in the Secretary of the Interior to
reinstate an oil and gas lease which has been relinquished.

RELINQUISHED
LEASE CANNOT BE
REINSTATED

One who voluntarily surrenders his oil and gas lease, by
filing a written relinquishment thereof in the appropriate
BLM office, cannot withdraw his relinquishment.

RELINQUISHMENT
CANNOT BE
WITHDRAWN

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August 29, 1972 - Tenneco Oil Company (7 IBLA 151)

Oil and Gas Leases: Bona Fide Purchaser

The purchaser of an assignment of an oil and gas lease is
presumed to have knowledge of the date and terms of the
lease and its status at the time of the assignment. If he
does not, he is put on inquiry.

BONA FIDE
PURCHASER -
PROTECTION OF
ASSIGNEE

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May 12, 1972 - Arthur E. Meinhart, Irwin Rubenstein,
Appellants, Bruce Anderson, Appellee (6 IBLA 39)

Oil and Gas Leases: Cancellation

The description in an acquired lands oil and gas lease offer
of a parcel of unsurveyed land without metes and bounds
showing courses and distances between successive angle
points and a tie by course and distance to a nearby official
survey corner is defective, and a lease issued pursuant to
the offer must be canceled where a junior offer properly
describes the land in conformity with the regulations.

CANCELLATION -
LEASE ISSUED FOR
DEFECTIVE OFFER
WHEN A PROPER
JUNIOR OFFER
EXISTS

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February 22, 1972 - Duncan Miller (5 IBLA 21)

Oil and Gas Leases: Cancellation

Where land not owned by the United States has been leased
for oil and gas purposes under the terms of the Mineral
Leasing Act for Acquired Lands, the lease must be canceled
as only land owned by the United States is subject to
leasing under that Act.

CANCELLATION -
LEASE IMPROPERLY
ISSUED FOR
LANDS NOT OWNED
BY THE U.S.

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H-3108-1 - RELINQUISHMENTS, TERMINATIONS, AND CANCELLATIONS

February 18, 1972 - Husky Oil Company of Delaware, Depco, Inc. (5 IBLA 7)

Oil and Gas Leases: Rentals--Oil and Gas Leases:
Termination--Statutory Construction: Generally

Congress intended that the automatic termination provision of 30 U.S.C. 188 (1970) apply to the regular, annual rental payment, the necessity for which a lessee had continuous notice and that provision was not intended to apply to a case where a lessee had no way of knowing that the obligation had accrued.

TERMINATION -
NOT APPLICABLE
WHEN PAYMENT DUE
DATE IS OTHER
THAN REGULAR
ANNUAL DUE DATE

November 27, 1970 - Sarkeys, Inc. (1 IBLA 123; 77 I.D. 207)

Oil and Gas Leases: Bona Fide Purchaser--Oil and Gas Leases:
Cancellation

Where an oil and gas lease is considered to have been terminated pursuant to 30 U.S.C. sec. 188(b) and the rental payment to preclude such termination had been timely submitted to the land office but inadvertently applied to another lease account, and then refunded to the payor when the lease to which payment had been attributed was relinquished, who accepted the refund without question, it is correct to hold that the lessee's rights in the terminated lease have been extinguished, and that a new oil and gas lease, duly issued for such lands and thereafter assigned to a bona fide purchaser, is valid.

BONA FIDE
PURCHASER
PROTECTION

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